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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

Case No.: Case No. BK-S-23-10423-MKN

Chapter 11

CASH CLOUD, INC.,
dba COIN CLOUD,

Debtor.

**DEPOSITION DESIGNATION OF TANNER
JAMES AS THE FRCP 30(b)(6)
DESIGNATED REPRESENTATIVE OF
CASH CLOUD, INC., dba COIN CLOUD IN
CONNECTION WITH EVIDENTIARY
HEARING ON MOTION TO APPROVE
SETTLEMENT AGREEMENT WITH
COLE KEPRO INTERNATIONAL, LLC
PURSUANT TO FEDERAL RULE OF
BANKRUPTCY PROCEDURE 9019**

Hearing Date: November 28, 2023

Hearing Time: 1:30 p.m.

1

2 Pursuant to LR 7032, Christopher McAlary (“Mr. McAlary”) by and through his attorneys
3 of record, Carlyon Cica Chtd. and Diamond McCarthy LLP, hereby designates the following
4 portions of deposition to be submitted into evidence in connection with the Evidentiary Hearing set
5 for November 28, 2023, at 1:30 p.m.

6 Christopher McAlary designates the following sworn testimony given by Tanner James as
7 the FRCP 30(b)(6) Designated Representative of Cash Cloud, Inc. dba Coin Cloud on October 24,
8 2023. Pursuant to LR 7032(a), a full transcript of the testimony, including Reporter’s certification,
9 is attached hereto as Exhibit 1.

10 **PORTIONS OF DEPOSITION TRANSCRIPT DESIGNATED BY MCALARY:**

11 Page 5:

12 23 A. My name is Tanner James. I'm the vice president
13 24 at Province, the financial advisor of the debtor.Respectfully submitted this 18th day of
14 November 2023.

15 Page 7:

16 21 Q. You're here as the designated representative of
17 22 Cash Cloud Inc. d/b/a Coin Cloud.

18 23 Do you understand that?

19 24 A. Yes.

20 Page 24:

21 16 Q. So what was your involvement in the process
22 17 leading up to the proposed settlement between the debtor
23 18 and Cole Kepro?

24 19 A. Sure. Generally, I'm involved in most aspects of
25 20 this particular project, simply because I am, you
26 21 know -- maybe the best way to put it is the more junior
27 22 execution or point person below -- directly below the
28 23 principals who are often making important decisions on

1 24 the case. So my familiarity with sort of the background
2 25 of the company, you know, the process of the bankruptcy,

3 Page 25:

4 1 all of the milestones along the way, you know, the
5 2 resolutions up to the point of that settlement, and sort
6 3 of my understanding of the debtor's relationship with
7 4 Cole Kepro, at least from what had been described to me
8 5 by management.

9 6 Q. So what sort of input did you have or direction
10 7 did you have with regard to the settlement process?

11 8 A. Sure. So I was certainly involved in my typical,
12 9 you know, capacity. Oftentimes I'm also in a position
13 10 to make, you know, decisions as well. But providing
14 11 supporting analysis or general sanity checks on
15 12 negotiations with third parties like Cole Kepro or
16 13 dealing with the committee, whatever it has to be for
17 14 that particular work stream.

18 Page 26:

19 1 Q. Okay. So I am asking whether you had provided
20 2 any sort of analysis of that proposed settlement to
21 3 anyone....

22 ...

23 9 A. Sure. I participated in probably several
24 10 conversations with, you know, a principal at Province as
25 11 well as debtor counsel. And I was also, to my memory,
26 12 part of maybe several, if not one, larger thread of
27 13 correspondence with the committee about the proposal.
28 14 But, to my memory, there's no proprietary written

1 15 analysis of specific parts of the proposal. But there
2 16 were extensive conversations about the details of it.

3 Page 28:

4 15 Q. Did Province provide a specific opinion about
5 16 whether the proposed settlement with Cole Kepro was a
6 17 good one?

7 ...

8 20 A. Yes. Province provided input on the settlement.

9 Page 30:

10 I don't want to put words in your mouth,
11 22 but is your testimony that Province had input, and based
12 23 upon the instruction, you can't tell me that input,
13 24 because Province gave that input as part of some joint
14 25 interest privilege?

15 Page 31:

16 1 A. Yeah, I would say that Province -- Province
17 2 provided feedback, you know, throughout the course of
18 3 this settlement process, without trying to get into the
19 4 details of --

20 5 Q. And --

21 6 A. -- what -- and I'll -- I guess I'll tell you that
22 7 I'm not giving all of the detail because of the
23 8 privilege that the attorneys instructed me on.

24 ...

25 18 A. I would say that's fair that Province provided
26 19 input, but I cannot talk about the detail of the input.

27 Page 32:

28 13 Q. On behalf of the debtor, do you have an opinion

1 14 about the proposed settlement agreement?

2 15 A. My understanding is that Province supports the

3 16 settlement, generally speaking.

4 ...

5 23 Q. Did the debtor perform any assessment of the

6 24 proposed settlement agreement?

7 Page 33:

8 1 A. Yes. I would say that the debtor collectively as

9 2 professionals thoroughly considered the proposal and the

10 3 situation and moved forward in the best interest of the

11 4 debtor.

12 5 BY MR. STROTHER:

13 6 Q. Is there any written assessment that the debtor

14 7 has done, including you on behalf of the debtor, of the

15 8 proposed settlement agreement?

16 9 A. I don't know that there are any formal internal

17 10 memos. There's certainly privileged correspondence and

18 11 then the declarations on the record that explain the

19 12 situation more broadly.

20 Page 34:

21 4 Q. So, as you sit here today, do you have -- on

22 5 behalf of the debtor, do you have a general

23 6 understanding of what the debtor's assets are?

24 7 A. Yes.

25 8 Q. Is the claim against Cole Kepro one of those

26 9 assets?

27 10 A. I would probably characterize it that way, yes.

28 11 Q. What's the value of that asset?

1 12 A. As it stands, I believe the value of the asset is
2 13 the settlement agreement that was put forth on the
3 14 docket.

4 15 Q. Well, you're aware that Mr. McAlary has made an
5 16 offer for that claim against Cole Kepro to purchase it
6 17 for \$1 million cash; correct?

7 18 A. Yes. That sounds correct.

8 ...

9 21 Q. So what is -- tell me what the proposed
10 22 settlement agreement with Cole Kepro is. What are the
11 23 terms?

12 24 A. Generally, it's for about \$850,000 in the form of
13 25 a promissory note with an intercreditor agreement in a

14 Page 35:

15 1 relatively short -- what I'd call maturity, I guess, and
16 2 it's collateralized by assets of CKI.

17 3 Q. And specifically, it's collateralized by the
18 4 proceeds from an insurance claim that Cole Kepro has or
19 5 will make on an insurance policy that the carrier is
20 6 Euler; correct?

21 ...

22 9 A. I guess I'd ask my attorneys.

23 Page 42:

24 25 What assets of
26 10 Cole Kepro secure the promissory note that's part of the
27 11 proposed settlement agreement?

28 12 A. My understanding from the settlement documents is
13 that it's secured by insurance assets or an insurance

1 14 policy --

2 15 Q. Okay.

3 16 A. -- is probably how it was phrased.

4 ...

5 20 Has an insurance claim been accepted by Cole

6 Kepro's insurer?

7 22 A. I actually don't know if it's been formally

8 accepted or not.

9 24 Q. Do you know if it's been informally accepted by

10 Cole Kepro's insurer?

11 Page 43:

12 1 A. I don't know that it's -- I actually honestly

13 2 don't know that it's even been submitted. I'm not

14 3 familiar enough with their operations.

15 4 Q. Have you, Tanner James, been corresponding or

16 5 speaking directly with anyone on Cole Kepro's behalf?

17 6 A. On Cole Kepro's behalf?

18 7 Q. Right.

19 8 A. So for Cole Kepro?

20 9 Q. Right.

21 10 A. No. I would say that's probably not accurate.

22 Page 45:

23 12. ...but what

24 13 is the value of the proposed settlement agreement?

25 ...

26 15 A. Sure. I think at its face, the value of the

27 16 proposed settlement agreement is the amount of the

28 17 promissory note, which is, it's my memory, \$850,000.

1 18 BY MR. STROTHER:

2 19 Q. How do you say that in the face of a \$1 million
3 20 cash offer with no contingencies from Mr. McAlary for
4 21 the same claim?

5 ...

6 23 A. Sure. Looking at my memory of the McAlary offer,
7 24 I believe at least one component of it, you know, the
8 25 cash consideration aside, was -- you know, were things

9 Page 46:

10 1 like contingency on court approval in the bankruptcy
11 2 court, among other factors that also need to be assessed
12 3 in the value and viability of that proposal relative to
13 4 the other that we have.

14 5 BY MR. STROTHER:

15 6 Q. So, I mean, the Cole Kepro proposed settlement is
16 7 contingent upon bankruptcy court approval. True?

17 8 A. Yes. I believe so.

18 9 Q. So that shouldn't be a difference that would
19 10 reduce Mr. McAlary's offer to be worth less than a
20 11 million, should it?

21 12 A. So without getting too far into the details of
22 13 privilege -- I guess is what I'd clarify -- the
23 14 information that we've been given, you know, by Cole
24 15 Kepro, it would bring concern of the ability for maybe
25 16 one to close over the other.

26 ...

27 22 A. Sure. To clarify, our assessment of the
28 23 information that has been provided to us related to Cole

1 24 Kepro -- which is probably spelled out also in my
2 25 declaration -- and particularly the financial state of
3 Page 47:
4 1 Cole Kepro, partied with that contingency in Chris's
5 2 offer of contingent on approval by the bankruptcy court,
6 3 you know, at its face may bring question as to whether
7 4 or not a proposal put in front of the court involving
8 5 Chris and an immediate response of some type of
9 6 bankruptcy by Cole Kepro could cause that transaction to
10 7 not close.

11 8 Q. So if that contingency were removed in one way or
12 9 another, would Mr. McAlary's offer be actually better
13 10 than Cole Kepro's offer?

14 ...

15 12 A. I don't know that it would be appropriate to make
16 13 that assessment in its entirety right here right now, as
17 14 there are a variety of factors that have to be, you
18 15 know, accounted for in that offer when comparing them,
19 16 if the offer were to change materially right now.

20 ...

21 19 ...So tell me what you believe
22 20 the contingencies are from Mr. McAlary.

23 21 A. Sure. I'd like to caveat that I'm not an
24 22 attorney, and this is from my understanding of
25 23 proposals. But I would certainly want legal input from
26 24 the attorneys on other aspects, as the contingency on
27 25 court approval is probably just one of many components

28 // /

1 Page 48:

2 that would need to be weighed against each other.

3 Q. But you don't know what the other components are?

4 A. Sure. I can give another example.

5 ...

6 A. Another example may be -- my understanding and

7 also at its face -- allocations to specific parts of

8 proposals -- of the McAlary proposal. My understanding

9 is that it's for a variety of assets, not just one

10 single asset. And though at its face, the cash amount

11 is higher collectively, the individual litigations and

12 claims need to be assessed independently. And it may be

13 difficult to do so if they're all contingent on each

14 other in Chris's proposal where the claims are a

15 package, for lack of a better term.

16 BY MR. STROTHER:

17 Q. So you and I may not be on the same page. Is it

18 your -- are you aware that Mr. McAlary has made a

19 \$1 million cash offer for solely the Cole Kepro

20 litigation -- the claims against Cole Kepro?

21 ...

22 A. That sounds right. I've seen various iterations

23 of this proposal and just gave an example of how the

24 assessment happened between the --

25 Page 49:

26 A. And again erring on the side of caution, I

27 believe another example and reason put forward on the

28 docket -- maybe it was in Mr. Ayala's declaration -- was

1 15 potentially the collectibility of those proceeds from
2 16 Mr. McAlary.

3 17 BY MR. STROTHER:

4 18 Q. So when evaluating -- and I'm asking about the
5 19 debtor right now. When the debtor evaluated these
6 20 competing offers, the debtor looked at what the claims
7 21 brought by the committee against Mr. McAlary were worth
8 22 or whether they could even be won or collected?

9 . . .

10 25 A. I believe that, you know, there are a variety of

11 Page 50:

12 1 factors that need to be considered with
13 2 collectibility -- with respect to collectibility from
14 3 Mr. McAlary. I would certainly and maybe not
15 4 unreasonably assume that there would be difficulties not
16 5 only maybe getting that approved with the current state
17 6 of derivative standing with the committee's claims
18 7 against Mr. McAlary, but also even just financial
19 8 collectibility relative to what -- the information we
20 9 have about Cole Kepro.

21 10 BY MR. STROTHER:

22 11 Q. Has the debtor looked at collectibility from
23 12 Mr. McAlary regarding the claims brought by the
24 13 committee against Mr. McAlary?

25 14 A. I'm not entirely the closest person to that
26 15 particular topic. But certainly, I'm sure it's
27 16 something that's been considered at least by the other
28 17 professionals.

1 Page 51:

2 15 Have there been any conversations between the
3 16 debtor and the committee about whether the committee
4 17 would object to a settlement between the debtor and
5 18 Mr. McAlary?

6 ...

7 22 A. I'm not going to answer that at direction of
8 23 counsel.

9 24 BY MR. STROTHER:

10 25 Q. Okay. Just to be clear, Mr. Matott and his firm

11 Page 52:

12 1 doesn't represent the debtor or you or Province;
13 2 correct?

14 3 A. I would say Mr. Matott and Seward & Kissel
15 4 represents the committee. But my understanding is
16 5 there's a joint interest agreement in place between the
17 6 debtor and the committee.

18 7 Q. Is it a written joint interest agreement? If you
19 8 know.

20 9 A. I believe so. I'm not an attorney responsible
21 10 for that work stream, so I defer to counsel.

22 Page 53:

23 6 Q. Okay. What's your knowledge of the status of
24 7 Cole Kepro's insurance claim?

25 8 A. I believe, as I said before, I'm not entirely
26 9 sure today what the status of that claim is. I do know
27 10 that Cole Kepro has informed us that there is an
28 11 insurance policy related to this matter that they would

1 12 look to exercise.

2 ...

3 20 Tell me if my understanding is correct. To
4 support the settlement, it's true, isn't it, that the
5 debtor would have to allow Cole Kepro's claim?

6 23 A. That sounds correct to me.

7 24 Q. Okay. And do you know whether that aspect of the
8 transaction and the required behavior by the debtor has

9 Page 54:

10 1 been discussed with Cole Kepro's insurer?

11 ...

12 3 A. I'm not familiar with -- I guess what I'd say, my
13 knowledge isn't that deep in Cole Kepro's operations and
14 affairs with its own third parties.

15 6 BY MR. STROTHER:

16 7 Q. Do you know whether anyone on behalf of the
17 debtor or the committee has spoken with Cole Kepro's
18 insurer?

19 ...

20 11 A. Not that I'm aware of, but I wouldn't say that
21 precludes the possibility of it.

22 ...

23 17 Do you know whether anyone on behalf of the
24 debtor or the committee has communicated directly with
25 Cole Kepro's insurer?

26 ...

27 21 A. Not that I'm aware of. But, again, I would say
28 that wouldn't preclude the possibility.

1 Page 55:

2 4 As you sit here today, do you have any knowledge
3 5 one way or the other about what Cole Kepro's insurer's
4 6 position is on whether it's going to pay the claim or
5 7 not?

6 ...

7 9 A. I guess anything that I would know about that
8 10 would be speculative and probably something that
9 11 somebody told me in a conversation, but I haven't seen
10 12 anything otherwise.

11 ...

12 18 A. Again, I don't know of any communications with
13 19 debtor or committee representatives. Again, wouldn't
14 20 say that precludes the possibility of it. My knowledge,
15 21 I don't know of one correspondence or any type of
16 22 communication. But I would say the estate professionals
17 23 have been pretty thorough, so.

18 24 Q. Which professionals?

19 25 A. Specifically, I'd say the debtor professionals,

20 Page 56:

21 1 Province and debtor counsel. And I'm sure the other
22 2 interested parties in this settlement have also been.

23 ...

24 6 Q. Does the debtor have a position on the likelihood
25 7 of the insurer actually paying that claim?

26 8 A. Yes. I believe the debtor -- the debtor's
27 9 position is that the insurance claim is collectible and
28 10 is, you know, part of the reason why the settlement was

1 11 put forward.

2 12 Q. Why does the debtor believe that?

3 ...

4 14 A. I would leave that assessment to counsels. I'd

5 15 probably put it in the court of a legal analysis.

6 16 BY MR. STROTHER:

7 17 Q. Do you know whether the debtor has retained

8 18 insurance counsel to evaluate the likelihood of that

9 19 claim being paid?

10 20 A. I would generally say that would be a decision

11 21 I'd leave with counsel. And their, you know -- their

12 22 assessment of whether that's necessary, I'd defer to

13 them.

14 Page 57:

15 1 A. It may have happened internally at Fox Rothschild

16 2 or one of the other estate professional's firms, but

17 3 it's not something that I would have been involved with,

18 4 as it's not my expertise and place to weigh in.

19 5 Q. Have you received any information from Cole Kepro

20 6 regarding the status of the insurance claim?

21 7 A. Not to my knowledge, no. I've received the

22 policy.

23 Page 58:

24 8 Q. But you haven't asked Cole Kepro for

25 9 communications between Cole Kepro and the insurer?

26 10 A. That is not a request that I'm aware of, no.

27 ...

28 14 Q. Why not? Isn't that something that you think

1 15 should be part of due diligence?

2 ...

3 18 A. I would say that that's probably a route that you
4 could take in diligencing this particular settlement,
5 20 yes.

6 21 BY MR. STROTHER:

7 22 Q. Wouldn't you want to know that the policy was
8 paid up to date so that it's actually effective before
9 accepting the settlement?

10 Page 59:

11 1 A. I believe that there are -- there's likely an
12 2 endless amount of diligence that you could do on Cole
13 3 Kepro and its financial state, all aspects of the
14 4 insurance policy. But at that particular time, it was
15 5 seen as likely the only viable path forward, and, you
16 6 know -- especially when paired with the unresponse --
17 7 the lack of response that we got in interest for this
18 8 particular asset and the urgency of the debtor's
19 9 financial state and moving forward and finding
20 10 resolution to the Chapter 11 bankruptcy as a whole.

21 ...

22 For the same reasons that I discussed
23 18 earlier. I'd say that at that time, it was the only
24 19 viable path forward because the other offer that we had
25 20 received was not at that time -- and today still -- seen
26 21 as a viable path forward.

27 Page 60:

28 1 Q. Okay. What happens to the settlement if Cole

1 2 Kepro's insurer does not pay on that claim?

2 ...

3 4 A. I believe that the \$850,000 promissory note would
4 5 still have at least a claim against Cole Kepro. I'd
5 6 defer to the lawyers on the legal analysis of what that
6 7 might look like in a bankruptcy or some other situation.

7 8 BY MR. STROTHER:

8 9 Q. Okay.

9 10 A. It's entirely speculative.

10 Page 62:

11 Did Cole Kepro's management team ever
12 communicate to you that Cole Kepro filing bankruptcy in
13 the future is a possibility?

14 13 A. Yes. They did, in fact, tell me that it was a
15 14 distinct possibility.

16 Page 63:

17 are you aware of anyone
18 6 evaluating the risk that Cole Kepro will actually never
19 7 pay the debtor a penny under the proposed settlement
20 8 agreement?

21 9 A. I believe there were privileged -- what I'd
22 10 probably consider privileged conversations about that
23 11 topic.

24 Page 64:

25 are you aware of
26 5 anyone evaluating the risk that Cole Kepro would not pay
27 6 the 850,000 -- not be able to pay the \$850,000 to the
28 7 debtor?

1 8 A. Yes. I'm aware of that being a consideration.

2 ...

3 did you evaluate the

4 risk?

5 13 A. I see. It was part of my assessment, and I also

6 14 believe that I saw that remedied by the security of the

7 15 promissory note and the maturity of the promissory note,

8 16 which were what I'd consider a short-term maturity. I

9 17 believe it was 60 days, something like that.

10 18 Q. Did you evaluate that, or are you testifying

11 19 about the evaluation that someone else did?

12 ...

13 21 A. Yes. I certainly thought of the collectibility

14 22 as an issue and had seen it remedied by what I consider

15 23 terms of the settlement.

16 24 BY MR. STROTHER:

17 25 Q. So as you sit here today under oath, do you

18 Page 65:

19 1 believe there's 100 percent probability that if this

20 2 settlement is approved, Cole Kepro is going to pay it?

21 ...

22 5 A. I don't know that I would ever say anything's

23 6 100 percent probability of happening. I would say that

24 7 there's a higher likelihood than other options that the

25 8 debtor has.

26 9 BY MR. STROTHER:

27 10 Q. Do you believe that there's a 90 percent or

28 11 higher probability that Cole Kepro is going to pay the

1 12 settlement if it's approved by the court?

2 ...

3 15 A. I would refrain from putting any specific number

4 16 on the probability without having a material assessment

5 17 of that.

6 Page 66:

7 I'm trying to understand

8 6 the debtor's position on what is the risk that Cole

9 7 Kepro is not going to be able to or decide not to pay

10 8 the \$850,000. And you've testified, I believe, that you

11 9 looked at the proposed settlement agreement and thought

12 10 that the remedy to collectibility was the security

13 11 interest. Do I understand your testimony correctly?

14 ...

15 14 A. My understanding of the situation is that the

16 15 debtor has engaged in good faith negotiations with Cole

17 16 Kepro, negotiated the best terms possible, and selected

18 17 the best path forward in its view of what to do with

19 18 this particular asset, which involves entering a 9019

20 19 with Cole Kepro for an \$850,000 promissory note.

21 20 BY MR. STROTHER:

22 21 Q. And you are at least discounting Mr. McAlary's

23 22 offer to less than \$850,000, I take it?

24 ...

25 24 A. I would say among other factors other than simply

26 25 discounting the cash value of it. The debtor has

27 Page 67:

28 1 assessed both offers and decided that the path of

1 2 entering a 9019 with Cole Kepro for \$850,000 is the best
2 3 path forward.

3 4 BY MR. STROTHER:

4 5 Q. So these questions I'm asking you are right down
5 6 the middle of the plate on the 30(b)(6) notice --
6 7 right? -- which includes analysis, evaluation, and
7 8 assessment of the settlement proposed; analysis,
8 9 evaluation, and assessment of Mr. McAlary's offer. And
9 10 I understand you're telling me that the debtor has done
10 11 that and concluded that the deal with Cole Kepro is
11 12 better than the deal with Mr. McAlary. Right? That's
12 13 your testimony?

13 16 A. That sounds correct.

14 17 BY MR. STROTHER:

15 18 Q. And I want -- I want to understand why. I want
16 19 to understand what the debtor has done to reach that
17 20 conclusion. So I just want to be entirely clear that if
18 21 you're not understanding my questions, that's the point.
19 22 What is it specifically about Mr. McAlary's
20 23 \$1 million cash offer for the litigation against Cole
21 24 Kepro that leads the debtor to believe that it is a
22 25 less-beneficial-to-the-debtor offer?

23 Page 68:

24 1 A. I would say –

25 ...

26 3 A. -- it's important not to underestimate the
27 4 difficulties that would come with closing on a
28 5 transaction or settlement with Mr. McAlary. Not only

1 6 for administrative or legal battles that may occur along
2 7 the way, but also for the distinct possibility that Cole
3 Kepro files for bankruptcy and diminishes the value of
4 those claims outside of a settlement with them. I think
5 that is an incredibly important aspect of this that
6 should not be under-weighted.

7 12 BY MR. STROTHER:

8 13 Q. Well, Mr. McAlary's offer comes with a warrant
9 14 that he is going to buy those claims against Cole Kepro
10 15 regardless of whether Cole Kepro declares bankruptcy or
11 16 not. So, I mean, do you know that? Are you aware of
12 17 that?

13 18 A. That sounds right to me.

14 ...

15 21 Q. Then why do you in your analysis worry about Cole
16 Kepro's bankruptcy with regard to Mr. McAlary's offer
17 23 but you seem to think that it's not going to be a
18 24 problem collecting on the \$850,000 promissory note?

19 Page 69:

20 1 A. In the debtor's assessment of the settlement that
21 2 has been proposed with Cole Kepro, it has come to the
22 3 conclusion that it is more likely that the debtor will
23 4 be able to execute that transaction and see those funds
24 5 come to the estate than it would be to pursue a
25 6 transaction with Mr. McAlary and collect –

26 ...

27 9 A. -- on that particular set of proceeds.

28 10 Q. But why? I've heard you say that, but I still

1 11 don't understand why the debtor believes that it's not
2 12 going to be able to get a million dollars cash from
3 13 Mr. McAlary.

4 ...

5 16 Q. Do you know?

6 17 A. Sure. I'd reference back to the question you
7 18 asked earlier –

8 ...

9 20 A. -- that resulted in my response of I believe it
10 21 was under privilege that those considerations were made.

11 Page 70

12 7 Is it your testimony that the debtor's reasoning
13 8 for believing that collectibility from Mr. McAlary
14 9 pursuant to a \$1 million cash offer is privileged and
15 10 you can't testify about it today?

16 ...

17 12 A. My testimony is that I've tried to expand on the
18 13 circumstances that are outlined in my declaration --
19 14 and, to the extent I can, Mr. Ayala's declaration -- of
20 15 concerns about collectibility from Mr. McAlary, the
21 16 circumstances of the debtor's Chapter 11 case with
22 17 respect to derivative standing, and also the financial
23 18 state and distinct risk of Cole Kepro filing bankruptcy
24 19 and diminishing the value of those claims, all things
25 20 that, to my understanding, have been disclosed on the
26 21 docket. And to the extent there are other
27 22 considerations in the assessment of this path forward,
28 23 my testimony is that I believe those conversations

1 24 happened under privilege.

2 Page 71:

3 you don't declare

4 8 anything about Mr. McAlary's offer at all in your

5 9 declaration. Does that jibe with your recollection?

6 10 A. Generally, that sounds right.

7 ...

8 You declared

9 13 in paragraph 6, "The debtor assessed the claims it had

10 14 against Cole Kepro and determined that because of Cole

11 15 Kepro's financial condition, pursuing litigation to

12 16 receive a judgment would not bear a net positive since

13 17 there was a high probability that the debtor would not

14 18 be able to collect on its judgment."

15 19 Do you still stand by that declaration today?

16 20 A. Yes.

17 21 Q. Okay. When you declared that "pursuing

18 22 litigation to receive a judgment would not bear a net

19 23 positive," what are the factors that go into creating a

20 24 positive or a negative when you made that statement?

21 Page 72:

22 2 A. Cole Kepro's -- the debtor's claims against Cole

23 3 Kepro, to my understanding, primarily stem from

24 4 circumstances that happened prior to the debtor's own

25 5 petition for bankruptcy. Not only that, but also what

26 6 happened before a speculative Cole Kepro bankruptcy.

27 7 With that in mind, those litigation claims would

28 8 be prepetition unsecured claims. And then Cole Kepro's

1 9 bankruptcy, it would be -- you know, there's a
2 10 possibility, as always, of a zero percent recovery for
3 11 an unsecured claim, if not -- you know, oftentimes,
4 12 unsecured claims get 2, 3 percent recovery on their
5 13 prepetition claims. That, in conjunction with the cost
6 14 of pursuing those litigations potentially in bankruptcy
7 15 court, the costs would likely exceed the proceeds from
8 16 any recovery on those claims if there were to be a
9 17 judgment.

10 Page 76:

11 Broadly speaking, how did this
12 10 proposed settlement with Cole Kepro actually get put
13 11 together? And by "put together," I mean who were the
14 12 parties or individuals that negotiated the deal and then
15 13 decided what the terms would be?

16 14 A. Sure. So initially Cole Kepro came to us, "us"
17 15 being Province. They indicated that they'd like to have
18 16 a conversation and initially informed us of their
19 17 financial state. Once that happened, negotiations with
20 18 them started about what a resolution might look like.
21 19 That went back and forth for some time, maybe two or
22 20 three weeks.

23 21 Q. Let me interrupt you for a moment. Who's
24 22 participating --

25 23 A. Sure.

26 24 Q. -- in those negotiations at that point?

27 25 A. Right. Province primarily at the beginning.

28 / / /

1 Page 77:

2 3 A. Negotiations developed, and there were points
3 4 where they slowed down, and we -- "we" being the
4 5 debtor -- thought maybe there isn't a settlement, and it
5 6 picked back up. As we got closer to what the settlement
6 7 is today, documents for a settlement started being
7 8 prepared. And I believe rather quickly after an
8 9 agreement was reached, everything was papered. And
9 10 there might have been some time before -- or between the
10 11 papering of those documents and the ultimate filing, but
11 12 just in ordinary course, I'd say negotiation with the
12 13 counterparty in consultation with the committee -- you
13 14 know, the committee had an active role in this, as they
14 15 do with everything else in the case.

15 ...

16 23 Q. So the version of the proposed settlement that's
17 24 been filed with the court, we've gone -- you and I have
18 25 gone through what those basic terms are. Who was it

19 Page 78:

20 1 that suggested those terms?

21 ...

22 4 A. I don't know that I could specifically reference
23 5 who proposed the exact terms of the entire agreement.
24 6 It was probably a conglomeration of a lot of different
25 7 opinions in conversations that happened that resulted in
26 8 an agreement.

27 Page 82:

28 22 A. In my review in preparation for this deposition,

1 ...

2 25 ... I reviewed those

3 Page 83:

4 1 correspondence to the extent that they're available to
5 2 me.

6 ...

7 7 Q. Okay. Do you know why the proposed settlement
8 agreement has Cole Kepro being released at the moment
9 that the bankruptcy court approves the settlement as
10 opposed to when Cole Kepro pays the settlement?

11 ...

12 13 A. I would defer to counsel on the legal aspects of
13 14 that. But I would assume that the debtor would want the
14 15 freedom to effectuate the settlement in the way that it
15 16 sees fit upon court approval.

16 17 BY MR. STROTHER:

17 18 Q. You're here testifying for the debtor, though, so
18 19 why are you assuming -- I mean, you're the mouth of the
19 20 debtor today; right?

20 21 A. Sure.

21 22 Q. Okay. So are you saying that the debtor is --
22 23 the debtor has evaluated whether that was a good idea or
23 24 not?

24 Page 84:

25 1 A. I would say that the debtor has evaluated it,
26 2 considering that it's reflected in those documents, yes.

27 3 BY MR. STROTHER:

28 4 Q. And as you sit here today on behalf of the

1 5 debtor, you don't know why the debtor is agreeing to
2 release those claims at the moment that the settlement
3 is approved as opposed to when the settlement's actually
4 paid?

5 ...

6 11 A. I would refer you to the prior answer that I gave
7 about why the debtor would do that.

8 13 BY MR. STROTHER:

9 14 Q. Why? I don't know your answer. Why did the
10 15 debtor do that?

11 16 A. The debtor would, presumably, based on putting
12 17 that term in the settlement agreement, like to
13 18 effectuate the settlement in the way that it sees fit
14 19 upon court approval.

15 Page 85:

16 17 Q. Okay. Are you here today able to tell me why the
17 18 debtor decided that that term should be effectuated in
18 19 that way?

19 20 A. The debtor negotiated the settlement in good
20 21 faith with Cole Kepro and found that these were the best
21 22 terms that they could get in the settlement. In that
22 23 negotiation, that was a term of the final settlement
23 24 that the debtor and Cole Kepro agreed upon.

24 Page 86:

25 26 A. Again, I believe that the debtor found that -- in
26 27 its good faith negotiations with Cole Kepro -- these
27 28 were the terms that it was able to get and put in front
28 5 of the court and that the debtor in its business

1 6 judgment would like to enter this settlement and

2 7 effectuate the transaction when it's approved.

3 ...

4 12 I believe you testified that the court would not

5 13 approve of a deal where Mr. McAlary purchased the Cole

6 14 Kepro claims for a million dollars?

7 15 A. I don't believe I said that.

8 16 Q. Okay. Do you have a position one way or the

9 17 other on that?

10 ...

11 19 A. I'd say the same as I said before. The debtor

12 20 assessed both paths forward for resolution of these

13 21 claims, the claims against Cole Kepro, and decided that

14 22 the most viable and best interest of the debtor was to

15 23 pursue the settlement with Cole Kepro.

16 Page 88:

17 22 Q. When you evaluated Cole Kepro's financial status,

18 23 did you do a look-back for fraudulent transfers?

19 24 A. That was not the scope of what I was analyzing.

20 25 Q. So no?

21 Page 89:

22 2 A. Right. No.

23 3 BY MR. STROTHER:

24 4 Q. Do you know what the relationship is, if any,

25 5 between Cole Kepro and Genesis Coin?

26 6 MR. MANN: Objection to form.

27 7 A. I'm not aware of any legal relations, but I'm

28 8 unsure what their business ventures -- if they involve

1 9 one another.

2 10 BY MR. STROTHER:

3 11 Q. Did you -- thinking about the claims against Cole
4 Kepro, did you ever do a breakdown of the financial
5 impact of I'll call it the kiosk problem on Cash Cloud's
6 operations?

7 Page 90:

8 18 A. I've absolutely seen Coin Cloud's financials over
9 what I'd probably call from its recorded existence until
10 very recently. And I've also, you know, seen various
11 documents related to the litigation throughout my time
12 engaged as a financial advisor to Coin Cloud. And I've
13 had numerous conversations with management and Chris
14 about what the debtor at that time believed transpired
15 and what Chris believed transpired. I've seen documents

16 Page 91:

17 1 that could correlate those two things, but I -- without
18 2 giving a legal opinion of if those damages are valid --
19 3 wouldn't be able to say for sure that I've conducted a
20 4 full analysis of it. But I'd be happy to say that I've
21 5 at least seen things that could relate them.

22 6 BY MR. STROTHER:

23 7 Q. Sidestepping and inviting you not to try to
24 8 conduct a legal analysis about the validity of the
25 9 claims, did you ascertain a range of values about the
26 10 likely damage caused by what the debtor is alleging in
27 11 its claims against Cole Kepro?

28 12 MR. MANN: Objection to form.

1 13 A. I don't know that a full analysis was ever
2 14 finalized. I've seen dips in the debtor's financials
3 15 during the time periods described by Chris and the
4 16 debtor, but I wouldn't be comfortable completely
5 17 quantifying or saying that there's a final analysis of
6 18 that. And I've also heard opinions from counsel who's
7 19 leading that litigation about what the potential value
8 20 of those claims are.

9 21 BY MR. STROTHER:

10 22 Q. Understood. Tell me about the dips that you saw,
11 23 then.

12 24 A. Sure.

13 25 Q. What was the -- can you quantify what dips you

14 Page 92:

15 1 saw?

16 2 A. I would probably say that Coin Cloud's
17 3 financials, for lack of a better term, almost imploded
18 4 several times with massive dips in primarily
19 5 profitability, at least on the books. Not always a
20 6 linear dip; sometimes large dips within a month that
21 7 lasted for months. And even during the bankruptcy, a
22 8 dip in the performance of the debtor's operations.

23 ...

24 20 Q. Have you ever spoken directly with anyone on
25 21 behalf of Fifth Third Bank?

26 22 Not personally.

27 Page 93:

28 2 Q. Okay. Have you participated as just an observer

1 3 and watched other people have conversations with Fifth
2 4 Third Bank?

3 5 A. I don't believe so directly, but I'm aware of
4 6 their involvement in the intercreditor agreement that's
5 7 been attached as part of the settlement.

6 8 Q. What is your knowledge about Fifth Third's
7 9 approval of the intercreditor agreement?

8 10 A. My understanding is that Fifth Third has agreed
9 11 to allow the debtor to take a senior position on the
10 12 insurance asset as it relates to Cole Kepro's financial
11 13 situation.

12 14 Q. Who on behalf of the debtor, if you know, had
13 15 those conversations with Fifth Third Bank?

14 16 A. I'm not specifically aware of the individuals
15 17 that were all part of it, but I believe it would be Fox
16 18 Rothschild, the debtor's counsel.

17 Page 94:

18 2 Q. Did the derivative claims brought by the
19 3 committee against Mr. McAlary impact the debtor's
20 4 analysis, evaluation, or assessment of Mr. McAlary's
21 5 offer to purchase the claims against Cole Kepro?

22 ...

23 7 A. I would say that, from my memory, it's referenced
24 8 certainly in I think Mr. Ayala's declaration in support
25 9 of the 9019 motion. Otherwise, I would assume those
26 10 conversations would be under privilege.

27 11 BY MR. STROTHER:

28 12 Q. And I don't want you to assume anything. If you

1 13 participated in privileged communications, by all means,
2 14 tell me that happened. But I don't want you to assume.

3 15 So do you know -- other than in Mr. Ayala's
4 16 declaration, are you aware of whether those derivative
5 17 claims impacted the debtor's analysis, evaluation, or
6 18 assessment?

7 19 A. I would say that on its own, the inclusion in
8 20 Mr. Ayala's declaration would indicate that the debtor
9 21 did.

10 ...

11 23 A. And therefore, there would have to be
12 24 conversations about it, or consideration that were under
13 25 privilege.

14 Page 102:

15 have you evaluated the likelihood of
16 2 getting a judgment against Mr. McAlary?

17 3 A. The debtor is not the one pursuing the claim, I
18 4 guess.

19 Page 103:

20 have you done any
21 7 kind of evaluation of the likelihood of the committee
22 8 getting a judgment against Mr. McAlary?

23 ...

24 10 A. I apologize. Maybe my earlier answer should have
25 11 been clarified by a yes, which is, you know -- is sort
26 12 of implied by the magnitude of the claim.

27 13 BY MR. STROTHER:

28 14 Q. Just the mere fact that the committee filed a

1 15 large claim against Mr. McAlary means that it's possible
2 16 that they win and there's a judgment against him?

3 ...

4 19 Q. Is that the logic?

5 20 A. I would say that that is a very high level way of
6 21 putting that, yes.

7 Page 107:

8 can you tell me why this declaration
9 2 from Mr. Ayala in support of the proposed settlement
10 3 between debtor and Cole Kepro refers to the debtor
11 4 rejecting an older offer by Mr. McAlary instead of the
12 5 one pertaining only to Cole Kepro? If you know.

13 6 MR. MATOTT: Objection. Calls for speculation.

14 7 BY MR. STROTHER:

15 8 Q. Right, right. If you know. If you don't know,
16 9 that's okay.

17 10 A. I don't know. I don't want to make an answer.

18 Page 108:

19 Did you, Tanner James, compare
20 19 a \$1 million offer from Mr. McAlary for the Cole Kepro
21 20 litigation against the proposed settlement between the
22 21 debtor and Cole Kepro?

23 22 A. Yes. I believe so. If you could show me -- if
24 23 you believe that I'm not referencing the correct offer,
25 24 it would be helpful. But, yes, as I understand your
26 25 question, yes.

27 Page 109:

28 1 Q. Okay. So why -- what was your outcome? What was

1 2 your conclusion when you did that comparison?

2 3 A. I believe we've discussed this several times

3 4 already during this testimony, but that one of these

4 5 options is less viable and likely uncollectible.

5 6 Q. The Cole Kepro one; right?

6 7 A. No.

7 ...

8 12 Q. Okay. So the potential judgment against

9 13 Mr. McAlary is potentially uncollectible -- I don't

10 14 understand your answer.

11 15 A. Right. I think you're mischaracterizing what I

12 16 said.

13 17 Q. Okay.

14 18 A. What I said was that Mr. McAlary's offer was a

15 19 less viable and likely uncollectible option versus the

16 20 9019 with Cole Kepro.

17 21 Q. Why are you calling Mr. McAlary's offer

18 22 uncollectible?

19 23 A. It would likely be -- as I described earlier,

20 24 there is less chance of collectibility based on the

21 25 circumstances of Cole Kepro's financial position.

22 Page 110:

23 14 You just said that the offer from Mr. McAlary is

24 15 potentially uncollectible. I think those were basically

25 16 your words. Is that accurate? Is that your testimony?

26 ...

27 18 A. As I would defer the legal analysis of this to

28 19 counsel, I believe any settlement with Mr. McAlary would

1 20 have to be approved by the court. In that instance,
2 Cole Kepro filing for bankruptcy would likely render
3 that uncollectible if the payment had not already been
4 made.

5 Q. ... why are you
6 assuming the payment wouldn't be made? It's a cash

7 Page 111:

8 1 offer; right?

9 A. Sure.

10 ...

11 Q. What terms are you aware of from Mr. McAlary that
12 suggests that he wouldn't pay the \$1 million?

13 ...

14 A. It seems that we're speculating quite a bit now
15 at this point, but I would say --

16 BY MR. STROTHER:

17 Q. Speculating about what? I would love to -- who's
18 speculating?

19 ...

20 A. Like I said in my previous answer, I'd leave the
21 legal analysis of this to the attorneys.

22 Q. What legal analysis?...

23 I leave the legal analysis to the attorneys. But
24 I believe if this settlement would require court

25 Page 112:

26 1 approval -- as an example, even if Mr. McAlary did pay
2 the debtor, what agreement is there to base that payment
3 on, and what is the chance Mr. McAlary sues the debtor

1 4 to return that payment without a court-approved
2 5 agreement, which would, to my understanding -- again,
3 6 would leave it to the lawyers -- maybe render that
4 7 agreement null or void.

5 ...

6 9 Where does the idea that the court would not
7 10 approve a purchase by Mr. McAlary come from?

8 11 A. I'd defer to counsel on the legal analysis of
9 12 that question, but --

10 Page 113:

11 21 Q. So will you please help me understand why you
12 22 can't tell me where the idea that the court would not
13 23 approve Mr. McAlary buying those claims for \$1 million
14 24 came from?

15 Page 114:

16 1 A. So let me be clear. As a professional -- I'm
17 2 pretensing my answer with that caveat because I'm not an
18 3 attorney, though I would like to give you the second
19 4 half of my answer,...

20 18 With conversation with what I said before in
21 19 mind, please, I believe that it does add challenges to
22 20 the potential approval of a settlement with Mr. McAlary
23 21 given the derivative standing the committee has to
24 22 pursue claims against Mr. McAlary. That, in itself, is
25 23 my answer. I believe that that is a factor that
26 24 increases the challenge in the probability that that is
27 25 a viable option for the debtor.

28 / / /

1 Page 116:

2 A. ...So given the –

3 ...

4 A. -- complexity of this question and how it's kind

5 of unfolded, I believe you asked how -- if I assessed

6 the viability or collectibility of this claim in any

7 way.

8 ...

9 A. I've had a variety of conversations with debtor's

10 counsel that included committee counsel, other estate

11 professionals, including Province. It's something that

12 Page 117:

13 has certainly been addressed in those conversations, as

14 well as my personal knowledge of the derivative standing

15 the committee has been granted and the circumstances of

16 the settlement that I'm aware of.

17 ...

18 Q. Your testimony was that a claim against

19 Mr. McAlary could render the likelihood that the court

20 would approve a settlement -- a purchase by Mr. McAlary

21 difficult or unlikely; right?

22 A. That sounds -- yeah, that sounds directionally

23 accurate.

24 ...

25 Q. Where did that come from? Did you generate that

26 idea, or did another human being generate that idea?

27 ...

28 A. I could tell you right now that, with those

1 24 pieces of the circumstances that we're looking at, I can
2 25 generate that idea. I just did. But it's something

3 Page 118:

4 1 that has also been considered by estate professionals,
5 2 including the debtor.

6 Page 122:

7 to what extent did the committee
8 7 participate in the terms of the proposed settlement
9 8 agreement between debtor and Cole Kepro?

10 ...

11 10 A. My understanding is that the committee,
12 11 specifically Seward & Kissel, played a role in helping
13 12 negotiate with Cole Kepro's counsel while Province was
14 13 directly negotiating with the business side of Cole
15 14 Kepro, which is Corey and Fred.

16 Page 123:

17 I'm asking
18 23 the conversations that you had with Cole Kepro. You
19 24 indicated that you had negotiated directly on, you know,
20 25 the business people -- you negotiated directly with the

21 Page 124:

22 1 business people. So I want to know what aspects of a
23 2 proposed settlement agreement those negotiations
24 3 comprised?

25 4 A. Certainly the economic terms. The negotiations
26 5 from the Province side were, you know -- at the very
27 6 least, the Province side were fairly balanced. The
28 7 negotiations were on and off as things changed. But

1 8 generally, the economic terms, you know, took priority,
2 9 and then opinion from legal counsel was taken where
3 10 needed.

4 11 Q. What are you referring to as the "economic terms"

5 12 in the final proposed settlement agreement?

6 13 A. Certainly the cash consideration, the form -- or

7 14 sorry. Not -- I guess it's not technically a cash

8 15 consideration. The -- what's the best way to put it?

9 16 Maybe the \$850,000 and the form that it came in, whether

10 17 that be cash or some type of note payable, things to

11 18 that effect. The maturity, the security interest of it.

12 19 Its position in the company's capital structure -- and

13 20 when I say "the company," I mean Cole Kepro -- if it

14 21 were to be successfully agreed upon. Probably among

15 22 others, but those are highlight economic terms.

16 Page 125:

17 16 Q. We assert that there is a risk that if the court

18 17 approves the settlement with Cole Kepro and all the

19 18 pieces fall into place and the debtor is paid \$850,000

20 19 pursuant to the promissory note, that Cole Kepro could

21 20 still file bankruptcy and call back that \$850,000

22 21 payment. That's our assertion. I'm asking you on

23 22 behalf of the debtor, does the debtor acknowledge that

24 23 there is a risk?

25 24 A. Right. So, again, I would say, just for clarity

26 25 of the record, it would probably require some amount of

27 Page 126:

28 1 legal analysis, but, yes, the debtor acknowledges that.

1 Respectfully submitted this 18th day of November, 2023.

2 **CARLYON CICA CHTD.**

3 */s/ Candace Carlyon*

4

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CERTIFICATE OF SERVICE

I am an employee of Carlyon Cica Chtd. On the date of filing of the foregoing papers with the Clerk of Court I caused a true and correct copy to be served in the following manner:

ELECTRONIC SERVICE: Pursuant to LR 2002 of the United States Bankruptcy Court for the District of Nevada, the above-referenced document was electronically filed and served on all parties and attorneys who are filing users through the Notice of Electronic Filing automatically generated by the Court.

8 UNITED STATES MAIL: By depositing a true and correct copy of the above-referenced
9 document into the United States Mail with prepaid first-class postage, addressed to the parties
10 at their last-known mailing address(es):

11 OVERNIGHT COURIER: By depositing a true and correct copy of the above-referenced
12 document for overnight delivery via a nationally recognized courier, addressed to the parties
13 listed below which was incorporated by reference and made at their last-known mailing
14 address.

15 FAXSIMILE: By sending the above-referenced document via facsimile to those persons
16 listed on the attached service list at the facsimile numbers set forth thereon.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Candace Carlyon
An employee of Carlyon Cica Chtd.

EXHIBIT 1

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

)

)

CASH CLOUD, INC.,)

dba COIN CLOUD ,)

) CASE NO. BK-23-10423-MKN

) Chapter 11

Debtor.)

- 3

DEPOSITION OF

TANNER JAMES

AS THE FRCP 30(b)(6) DESIGNATED REPRESENTATIVE OF

CASH CLOUD, INC., dba COIN CLOUD

LAS VEGAS, NEVADA

TUESDAY, OCTOBER 24, 2023

Reported By Mia C. O'Sullivan, RPR, NV CCR No. 964

Job No. 6277646

1 DEPOSITION OF TANNER JAMES,
2 taken at the offices of Fox Rothschild LLP, located at
3 1980 Festival Plaza Drive, Suite 700, in Las Vegas,
4 Nevada, on Tuesday, October 24, 2023, at 9:06 a.m.,
5 before Mia C. O'Sullivan, Certified Court Reporter, in
6 and for the State of Nevada.

7
8 APPEARANCES:

9
10 For the Debtor:

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3 BY: ANDREW J. MATOTT, ESQ. (via Zoom)

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10 Also Present:

11 Chris McAlary (via Zoom)

12

13

14

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I N D E X

WITNESS: TANNER JAMES

EXAMINATION

PAGE

BY MR. STROTHER

5

E X H I B I T S

MARKED

PAGE

None

1 LAS VEGAS, NEVADA; TUESDAY, OCTOBER 24, 2023
2
3 9:06 A.M.
4 ***
5 (The Reporter was relieved of her duties under
6 NRCP 30(b)(5).)
7 Whereupon,
8 TANNER JAMES,
9 having first been called as a witness, was duly sworn
10 and testified as follows:
11
12 MR. STROTHER: Why don't we get our stipulations
13 on the record before we begin. My understanding is that
14 we have a stipulation that one objection by an opposing
party is good for all the opposing parties.
15 MR. MANN: Yes.
16 MR. STROTHER: Okay. And what was the other one?
17 Oh, reserve all objections except for form.
18 MR. MANN: Yeah.
19 MR. STROTHER: Okay. We agree to that.
20 EXAMINATION
21 BY MR. STROTHER:
22 Q. Please introduce yourself.
23 A. My name is Tanner James. I'm the vice president
24 at Province, the financial advisor of the debtor.
25 Q. Thank you.

1 I'm going to ask a few basic questions to
2 identify you more -- in more detail for the record.

3 What is your date of birth?

4 A. My date of birth is

5 Q. And what is your current residential address?

6 A.

7 Q. Mr. James, have you ever given a deposition
8 before?

9 A. Yes.

10 Q. Do you know how many times or approximately how
11 many times?

12 A. I think this is number three.

13 Q. Okay. Then it's probably becoming old hat for
14 you, but let me go over some of the basic things that
15 are going to make our court reporter's job easier.

16 The first thing is you do understand that you
17 just took an oath to tell the truth under penalty of
18 perjury?

19 A. Yes.

20 Q. And you understand that our court reporter here
21 to my right and to your left across the table is typing
22 down all of the things that are said while we're on the
23 record by anyone who says them?

24 A. Yes, I understand.

25 Q. Ultimately, this will turn into a written

1 transcript that can be used by the parties in this
2 bankruptcy proceeding.

3 A. Yes, I understand.

4 Q. You're doing a good job. Continue to please
5 answer out loud rather than gestures. I'll probably
6 understand your gesture, but Mia may have difficulty
7 appropriately transcribing them. Okay?

8 A. Understood.

9 Q. Additionally, use words. If you intend to give
10 an affirmative or negative answer, use words like "yes"
11 and "no" rather than "uh-huh." That's also very
12 difficult to get right in a transcript.

13 A. Of course.

14 Q. If you don't understand one of my questions at
15 any time, will you please let me know?

16 A. Yes.

17 Q. And, finally, continue to let me sometimes end my
18 longwinded questions before you begin I'm sure your very
19 succinct and direct answers. Okay?

20 A. Understood.

21 Q. You're here as the designated representative of
22 Cash Cloud Inc. d/b/a Coin Cloud.

23 Do you understand that?

24 A. Yes.

25 Q. Okay. Is that accurate, you're here testifying

1 on behalf of Cash Cloud Inc. d/b/a Coin Cloud?

2 A. Yes. That is my understanding.

3 Q. I refer to that party as Cash Cloud. Some may
4 more frequently refer to it as Coin Cloud. If I say
5 "Cash Cloud," do you understand who I'm talking about?

6 A. Yes, I do.

7 Q. Okay. You are giving testimony here today in
8 response to a 30(b)(6) notice that listed, I think, six
9 topics. So I want to go through each of those topics
10 and make sure that I do have the appropriate witness
11 here in front of me today. Okay?

12 A. Of course.

13 Q. The first topic is -- and I'm going to, as I --
14 well, no. Why don't I just read the entire topic out,
15 and then I may break it down for you.

16 The first topic is --

17 MS. CICA: Chris is in the waiting room, he said.

18 MR. STROTHER: Let's pause for a second.

19 (Pause in proceedings.)

20 BY MR. STROTHER:

21 Q. All right. So we were about to look at the --
22 not look -- we were about to discuss the topics of the
23 examination today. The first is -- and I'm reading from
24 the notice -- "The terms of the settlement agreement and
25 mutual release (the 'settlement agreement'), the

1 promissory note, and the intercreditor agreement
2 attached as exhibits to the joint motion to approve
3 settlement agreement with Cole Kepro International, LLC,
4 pursuant to Federal Rule of Bankruptcy Procedure 9019
5 (the '9019 motion')."

6 Before I ask you if you're the right witness
7 here, because that has a lot of italicized terms, I want
8 to make sure that you and I agree as to what those terms
9 are.

10 Do you understand that Cash Cloud is a debtor in
11 a bankruptcy proceeding right now?

12 A. Yes, I do.

13 Q. So I asked you if it would be okay if I used the
14 term "Cash Cloud" to refer to that entity. Would it
15 also be okay if I sometimes said "debtor" or "the
16 debtor"?

17 A. Yes. That makes sense.

18 Q. Okay. So do you understand that the debtor,
19 along with the committee of creditors in that bankruptcy
20 proceeding, has filed a motion seeking court approval of
21 a settlement between the debtor and a company called
22 Cole Kepro?

23 A. Yes. I'm aware of that.

24 Q. So -- more vocabulary -- are you familiar with
25 the entity Cole Kepro, International, LLC?

1 A. Yes, I am.

2 Q. Is it okay if I call that either "Cole Kepro" or
3 "CKI"?

4 A. Yes. That makes sense.

5 Q. All right. So in this first topic, it lists the
6 terms of the settlement agreement and mutual release.
7 Do you understand that that refers to the proposed
8 settlement agreement between Cole Kepro and the debtor?

9 A. Yes, I understand.

10 Q. Do you understand that the promissory note refers
11 to a promissory note that's part of that settlement
12 agreement where Cole Kepro, I believe, would be the
13 maker of the promissory note?

14 A. Yes, I understand.

15 Q. And do you understand that the intercreditor
16 agreement, also purportedly part of that settlement
17 agreement, refers to a document that would be signed
18 ostensibly by Third Fifth Bank?

19 A. Yes. That sounds right.

20 Q. So you know all of those documents and entities
21 in that first topic?

22 A. Yes. That's correct.

23 Q. Okay. Are you prepared to give testimony on that
24 subject today?

25 A. Yes, I am.

1 Q. Okay. The second topic, "Any analysis,
2 evaluation, or assessment of the financial condition of
3 Cole Kepro International, LLC," are you an appropriate
4 witness to give testimony on that topic?

5 A. Yes, I am.

6 Q. Third topic, "Any analysis, evaluation, or
7 assessment of the claims of Cole Kepro against the
8 debtor," are you an appropriate witness to give
9 testimony on that topic?

10 A. Yes. I believe so.

11 Q. "Any analysis" -- this is the fourth topic --
12 "Any analysis, evaluation, or assessment of the claims
13 of the debtor against Cole Kepro," are you an
14 appropriate witness to give testimony on that topic?

15 A. Yes. I believe so.

16 Q. The fifth and next-to-last topic, "An
17 analysis" -- pardon me. "Any analysis, evaluation, or
18 assessment of any offers to purchase the debtor's claims
19 against Cole Kepro, including any offers by McAlary,"
20 are you an appropriate witness for that topic?

21 A. Yes. I believe so.

22 Q. And, finally, "Any communications between the
23 debtor and the committee or the debtor and Cole Kepro
24 regarding settlement negotiations, the settlement
25 agreement, or the 9019 motion," are you an appropriate

1 witness to testify about that topic?

2 A. Yes. I believe so.

3 Q. Okay. Let's go into your background, please.

4 You started off when you identified yourself, mentioning
5 what your role is and who you're employed by. Let's go
6 back a little further. Tell me what your post-high
7 school education was.

8 A. Sure. So I attended -- pardon me. I attended
9 undergrad at a small regional school in the Midwest
10 called North Central College. I studied political
11 science and philosophy in undergrad. Immediately after
12 I graduated, I went into a master's program of financial
13 management and accounting.

14 After completing that program and doing a short
15 internship with a small private equity fund, I started
16 my first postgraduate career job at Province. I was
17 hired as an associate. I spent about two years in that
18 position before I was promoted to senior associate. I
19 spent about a year in that capacity before I was again
20 promoted to vice president.

21 Generally speaking, the role that I hold as a
22 vice president and as well as the other titles is
23 related to restructuring -- corporate restructuring.

24 Q. Let me follow up with a few questions.

25 So when did you earn your degrees?

1 A. I graduated from undergrad in 2019, and I
2 finished my master's program the following year, in
3 2020.

4 Q. Okay. You mentioned that you did some work for a
5 small private equity firm. When was that?

6 A. During the year of 2020, so during my master's
7 program.

8 Q. Okay. Who was that?

9 A. A small fund called IML Ventures.

10 Q. Okay. Tell me who Province is, for the record.

11 A. Province is a -- I guess, as the website would
12 put it, a nationally known financial advisory service
13 firm. Broadly speaking, we primarily do restructuring
14 related engagements, but we also offer forensic
15 accounting services, litigation support services, and a
16 suite of other financial advisory services across the
17 U.S.

18 Q. Do you remember your -- when your first day on
19 the job was?

20 A. Yes. It was, I believe, about August -- sometime
21 in August of 2020, shortly after I graduated, here in
22 Las Vegas.

23 Q. Okay. So you've been at Province, then, just a
24 little over three years?

25 A. That's correct.

1 Q. I may have misunderstood your path at Province,
2 then. I had written down that you were an associate for
3 two years and then a senior associate for two years
4 before being vice president?

5 A. One year as a senior associate --

6 Q. Okay.

7 A. -- and two years as an associate.

8 Q. Understood. Thank you.

9 Tell me when you were first introduced to this
10 case, the bankruptcy of Cole Kepro -- I'm sorry -- the
11 bankruptcy of Cash Cloud.

12 A. I believe I was first brought on to this case
13 early January of 2023.

14 Q. Do you know when Province first got involved?

15 A. Probably that same day.

16 Q. Okay. How were you introduced to the case? How
17 were you assigned to be involved in it?

18 A. A principal approached me and told me that there
19 was a potential debtor advisory opportunity for the firm
20 and that he'd like me to work on it. And from that day,
21 the ramp-up of the case slowly started.

22 Q. Who is that principal?

23 A. Paul Huygens.

24 Q. Is that H-A-G-E-N-S?

25 A. H-U-Y-G-E-N-S.

1 Q. Since -- you mentioned a ramp-up. Was, beginning
2 in January 2023, Cash Cloud your primary responsibility
3 within Province, or someone else's?

4 A. Generally, I held a role where I was attending to
5 most or all of the matters related to Coin Cloud, with
6 the oversight of a couple of the principals at Province.

7 Q. Do you know who made initial contact on behalf of
8 Coin Cloud to Province?

9 A. I believe our first conversation was with debtor
10 counsel. I'm not sure if they were formally engaged at
11 that time. I believe they were. But I know not shortly
12 after that, we had a conversation with Mr. McAlary.

13 Q. Okay. When you say "debtor counsel," are you
14 referring to Brett Axelrod at Fox Rothschild?

15 A. That's right.

16 Q. What was the scope of Province's initial
17 engagement by the debtor?

18 A. Usually, before we're formally engaged, we
19 have -- you know, it could be anywhere from a week to a
20 few weeks of an initial assessment. And that, you know,
21 at least in this case, ramped up pretty quickly to a
22 full-fledged debtor engagement.

23 Q. What do you mean by "full-fledged debtor
24 engagement"?

25 A. At that point, we start familiarizing ourselves

1 with the company and potentially preparing for filing
2 the company for bankruptcy or assessing any strategic
3 alternatives.

4 Q. So what was -- describe what the initial
5 assessment that you performed was.

6 A. If you'll excuse me, I've got to go clear my
7 throat. Is it okay if I run to the bathroom real quick?

8 Q. Absolutely.

9 ***

10 (RECESS TAKEN FROM 9:20 A.M. TO 9:22 A.M.)

11 ***

12 BY MR. STROTHER:

13 Q. Mr. James, we just took a very brief break. One
14 thing I didn't tell you on the record is if at any time
15 you need a break to use the restroom, clear your throat,
16 please just let me know, and we'll take one just as soon
17 as possible.

18 A. Absolutely.

19 Q. Okay. I was just asking you what the initial
20 assessment that you performed on behalf of Province
21 entailed.

22 A. Of course. It's certainly a robust process
23 familiarizing yourself with a new company on a timeline
24 of one that is distressed. You have to look at all
25 segments of the business, begin understanding its

1 financials, its operations, its management dynamics, and
2 a variety of other things, in order to assess what the
3 best path forward for the company is. That often
4 involves looking through diligence, files that the
5 company provides, any data runs that are available,
6 historic financials, things like audits, and getting a
7 practical sense from management of what the company's
8 current situation is.

9 Q. And when you answered right then, are you
10 referring specifically to what you did with regard to
11 Cash Cloud, or is this a general answer, or both?

12 A. I would say it's both. Every company is a
13 different situation, but that's a framework that you can
14 use to start, and then begin exploring the company's
15 specific needs as necessary.

16 Q. Okay. Do you know what the span of time that
17 initial assessment took?

18 A. You know, for Coin Cloud in particular, I believe
19 it was something like a month and a half, maybe a little
20 bit less. Generally speaking, that process is dependent
21 on the state of the company's financial affairs, and,
22 one, how prepared it is for bankruptcy, and, two, how
23 much time it has before something catastrophic happens
24 in lieu of bankruptcy.

25 Q. Do you know what importance, if any, that initial

1 assessment had with regard to the ultimate decision to
2 put Cash Cloud into bankruptcy?

3 MR. MANN: Objection to form.

4 A. Yeah. That initial decision period for Coin
5 Cloud -- I don't remember all the particular fires that
6 were happening at the time, but there were certainly
7 quite a few of them. I don't remember if there was a
8 filing date set from the get-go, but I do know that Coin
9 Cloud had a variety of issues that it was working to
10 resolve, including a lot of angry vendors.

11 BY MR. STROTHER:

12 Q. You referred to fires that needed to be put out.
13 Which ones -- which fires do you recall at that point in
14 time?

15 A. Most specifically, I certainly remember the
16 secured lenders being, you know, maybe not agitated, but
17 looking for resolution quickly. And I also certainly
18 recall specifically the landlords associated with Coin
19 Cloud's lease agreements beginning to take action
20 against the debtor that was certainly harmful to the
21 debtor's business.

22 Q. Which secured lenders were making their voices
23 heard at that point in time?

24 MR. MATOTT: Objection. And I just think this is
25 outside the scope as well, I'd like to put on the

1 record, to all the topics in the examination.

2 MR. STROTHER: Okay.

3 BY MR. STROTHER:

4 Q. You can answer.

5 A. Both Enigma and Genesis, from my memory. Maybe
6 Enigma more so. But certainly probably to some extent,
7 both were looking for resolution.

8 Q. At the end of Province's initial assessment, did
9 Province have a recommendation or any sort of decision
10 matrix that it presented with regard to strategic
11 alternatives to bankruptcy?

12 MR. MANN: Objection to scope.

13 MR. MATOTT: Same objection.

14 Justin, I don't know how this is inside the scope
15 at all, but I'm happy to let you keep going. But I'm
16 just going to keep lodging objections.

17 MR. STROTHER: Sure. I don't mind. I do want to
18 stay within the scope, obviously. But if you want to
19 hear why I think it's within the scope, I'm happy to do
20 that right now. If you would prefer that I not do that
21 I don't put anything into the witness's head or anything
22 like that, I'm happy to not do. I'll defer to either
23 one of you.

24 MR. MATOTT: I think we'd like to hear it now.
25 If you think Tanner should leave the room, that would be

1 our preference.

2 MR. STROTHER: Did you say you do want Tanner to
3 leave the room, or you're asking me?

4 MR. MANN: So let's take -- him to leave the
5 room --

6 MR. STROTHER: Sure.

7 MR. MANN: -- and then, yeah, just lay out your
8 grounds of why this is within the scope.

9 MR. STROTHER: Sure.

10 MR. MANN: I think that will be good.

11 MR. STROTHER: Sure.

12 (Witness exits proceedings.)

13 MR. MANN: Okay.

14 MR. STROTHER: Yeah, I certainly feel that I'm on
15 the outskirts of what I believe the scope is. One of
16 the -- one of our arguments -- and this comes through
17 explicitly in the topics -- is that we assert that, from
18 our viewpoint, it doesn't appear that the debtor did a
19 thorough analysis of Cole Kepro's situation, of the
20 claims against Cole Kepro, of Cole Kepro's claims. And
21 I'm trying to understand from Mr. James and Province
22 when they were actually doing serious analysis. And I
23 don't mean the word "serious" to say that, Okay, there's
24 a pejorative "not serious" analysis later, and when
25 they -- but when they weren't doing the same level of

1 analysis.

2 And so sometimes he's just answering a question
3 and giving me a little more information, and I'm
4 following up on that. If at some point you guys think
5 I'm crossing a line and you need me to -- you encourage
6 me to stop, tell me, and we can argue about it. But I
7 can -- now I know what your position is; I can try to
8 stay more firmly on that side of the line.

9 MR. MANN: Yeah, I think just touching more on
10 the analysis of the Cole Kepro and not all these other
11 issues that they had, secured lenders. I see where
12 you're saying like comparatively like the analysis of
13 what they're doing for these issues to what they're
14 doing with this one. But, yeah, I think -- if he comes
15 back in, if you want to just target more on his analysis
16 with Cole Kepro, I think that will be good.

17 MR. MATOTT: Yeah, I think to get to what you're
18 looking for, you can -- and I'm not trying to tell
19 you -- I think you can ask him directly when he started,
20 you know, assessing the viability of potential claims
21 against Cole Kepro and things like that. And I agree
22 with the secured lender stuff. I think -- there was a
23 lot going on at that time; there was a lot that was
24 wrong that doesn't have anything to do with this motion.
25 And I just worry we're going to go down rabbit holes and

1 be here a while. And I'm certainly -- like I'm not
2 going to try to keep (inaudible) and objecting. But I
3 would appreciate if you could kind of stay on that path
4 and ask those more direct questions.

5 MR. STROTHER: I think I can. We'll see how it
6 goes. Like I said, my intent is not to trample over the
7 boundaries of the predetermined topics. But if --
8 anyway. I understand your position, and I think I can
9 make you guys happy, relatively speaking.

10 MR. MANN: Sounds good with me. I'll try to
11 bring him back in.

12 (Witness returns to proceedings.)

13 BY MR. STROTHER:

14 Q. Okay. We are still on the record. Let me move
15 forward to -- let me move forward to -- let me move
16 backward. The attorneys in the room may not like that I
17 said it that way, but let me move backward toward your
18 background again.

19 A. Okay.

20 Q. So at the time that you began working on the Cash
21 Cloud engagement, had you ever -- you, personally, ever
22 served in this role for a company similar to Cash Cloud?

23 A. For clarification, yes, I've been a part of
24 debtor-side engagements as a financial advisor for
25 similar-size companies in Nevada.

1 Q. So my question -- thank you for pointing out the
2 size and the fact that a debtor -- you do have
3 experience with debtors.

4 Let me restate the question by asking this
5 question. What do you understand Cash Cloud's business
6 to be?

7 A. Well, it's certainly -- I would describe it as a
8 unique business. It's in the cryptocurrency industry,
9 but with a -- maybe what I'd say is a twist of money
10 services, money-type services. Not quite banking, but
11 customer-facing currency related services.

12 Q. What experience did you have prior to Cash Cloud
13 acting in that role for companies like what you just
14 described, either cryptocurrency or the more probably
15 broader description you gave after mentioning
16 cryptocurrency?

17 A. Specifically cryptocurrency, I don't know that
18 I've served as a debtor financial advisor. But the --
19 what I'd call wave of crypto bankruptcies that's come
20 over in the last -- you know, maybe today -- two
21 years is certainly a newer phenomenon.

22 Q. Were there any aspects of the case to this day
23 that you found particularly challenging because of --
24 well, for any reason? Was there anything about this
25 retention so far that's been particularly challenging?

1 MR. MANN: Objection to form.

2 A. Sure. Coin Cloud had a whole host of very unique
3 challenges. I wouldn't say that's because there's a
4 lack of opportunities to experience those things out
5 there; more so that for a relatively regional or smaller
6 business -- obviously, it had a national presence --
7 Coin Cloud had a particularly massive amount of
8 third-party contracts, particularly with smaller
9 mom-and-pop, as -- you know, the companies at times
10 referred to them as hosts for their kiosks, which were
11 oftentimes difficult to manage or negotiate with,
12 because they simply refused to. Coin Cloud, you know,
13 had some big case problems for a relatively speaking
14 smaller bankruptcy.

15 BY MR. STROTHER:

16 Q. So what was your involvement in the process
17 leading up to the proposed settlement between the debtor
18 and Cole Kepro?

19 A. Sure. Generally, I'm involved in most aspects of
20 this particular project, simply because I am, you
21 know -- maybe the best way to put it is the more junior
22 execution or point person below -- directly below the
23 principals who are often making important decisions on
24 the case. So my familiarity with sort of the background
25 of the company, you know, the process of the bankruptcy,

1 all of the milestones along the way, you know, the
2 resolutions up to the point of that settlement, and sort
3 of my understanding of the debtor's relationship with
4 Cole Kepro, at least from what had been described to me
5 by management.

6 Q. So what sort of input did you have or direction
7 did you have with regard to the settlement process?

8 A. Sure. So I was certainly involved in my typical,
9 you know, capacity. Oftentimes I'm also in a position
10 to make, you know, decisions as well. But providing
11 supporting analysis or general sanity checks on
12 negotiations with third parties like Cole Kepro or
13 dealing with the committee, whatever it has to be for
14 that particular work stream.

15 Q. Did you ever present an analysis of any aspect of
16 the proposed settlement?

17 A. I guess if you could clarify what type of
18 analysis. Are you referring to a specific assessment of
19 something?

20 Q. It could be -- well, at the very end of the
21 process, the debtor and the committee have filed a joint
22 motion seeking approval of a proposed settlement; right?

23 A. (Moved head.)

24 Q. Yes?

25 A. Yes. There is, yes.

1 Q. Okay. So I am asking whether you had provided
2 any sort of analysis of that proposed settlement to
3 anyone. And, to be clear about my question, when I say
4 "analysis," it could be a text message to someone that
5 says, This is great; this is good; this is bad. Or it
6 could be a colorful three-ring binder with 2,000 pages
7 or a two-hour PowerPoint. Anything where you opined
8 about the proposed settlement from your perspective.

9 A. Sure. I participated in probably several
10 conversations with, you know, a principal at Province as
11 well as debtor counsel. And I was also, to my memory,
12 part of maybe several, if not one, larger thread of
13 correspondence with the committee about the proposal.
14 But, to my memory, there's no proprietary written
15 analysis of specific parts of the proposal. But there
16 were extensive conversations about the details of it.

17 Q. So I'm going to ask a lot more questions about
18 that in a few minutes. So I'm giving you a signpost,
19 because it's going to feel like I'm leaving it alone.
20 I'm not. I'm coming back to it.

21 Who is the principal or principals at Province
22 that you've been working with?

23 A. Paul Huygens and Dan Moses are the two primary
24 that I've been working with.

25 Q. Is there one or the other that has more

1 involvement with Cash Cloud?

2 A. Yeah. I would say that -- and his full name --
3 my apologies -- is Daniel Moses -- would be the
4 principal that I had spent more time with on this.

5 Q. You mentioned that you had some communications
6 with the committee. How frequently did you have -- you,
7 specifically; not Province -- how frequently did you
8 have communications with the committee about the
9 settlement process?

10 MR. MANN: Objection to form.

11 MR. MATOTT: Objection.

12 I just want to raise here -- one second before
13 you answer.

14 I just want to put on -- I know you're asking
15 about frequency, but I do want to put an attorney-client
16 privilege objection on the record.

17 To the extent you can answer without talking
18 about the content of those conversations under our
19 common interest privilege, you can answer. But I would
20 direct you to withhold answering anything having to do
21 with the content of those conversations.

22 THE WITNESS: Sure.

23 BY MR. STROTHER:

24 Q. And I would just ask that if you're withholding
25 anything based upon that instruction, to let me know

1 that you're withholding something, so that we can take
2 it up if we disagree with that position.

3 So do you understand the question?

4 A. Yes, I do.

5 Q. Okay. So how frequently were you speaking with
6 the committee regarding the settlement process?

7 A. It's difficult to say, you know, which specific
8 conversations, if not all of them, it came up. But we
9 had meetings twice a week with committee professionals,
10 and I'd probably say various correspondence over email
11 or one-off phone calls between them.

12 Q. Okay.

13 A. More concentrated on this topic closer to the
14 settlement itself.

15 Q. Did Province provide a specific opinion about
16 whether the proposed settlement with Cole Kepro was a
17 good one?

18 A. Province --

19 MR. MATOTT: Object to form.

20 A. Yes. Province provided input on the settlement.

21 BY MR. STROTHER:

22 Q. So by "input," though, it could be you thought it
23 was a bad idea, good idea, neutral, or anything else.
24 So tell me what kind of input where you're actually
25 giving your thoughts or Province's thoughts about the

1 proposed settlement to debtor, debtor's counsel, the
2 committee, whomever.

3 MR. MANN: Objection to form.

4 MR. MATOTT: Objection again just to the extent
5 that calls for any matters that are privileged.

6 MR. STROTHER: Well -- okay. Let me make sure,
7 though. I mean, this is a declarant who has given sworn
8 testimony to the -- or declared testimony to the court
9 regarding the benefit of this settlement. So if he also
10 told it to someone else, I -- hopefully, you-all aren't
11 going to try to use the privilege as a shield and a
12 sword. So if one of the attorneys thinks that -- here's
13 my concern. When I hear the objection rather than an
14 instruction not to answer, I worry that a witness is
15 going to interpret that and start silently judging, Hey,
16 I'm just not going to give that answer. And I'm worried
17 that I'm not going to know that there is an answer
18 that's not being given to me.

19 So you-all two -- I'm saying two; I know there
20 are more than two attorneys -- keep me honest. But I'm
21 going to -- this is awkward to instruct a witness that's
22 not my witness.

23 BY MR. STROTHER:

24 Q. I'm going to instruct you to make sure that if
25 you're withholding information that your -- the

1 attorneys are arguing is privileged, that you let us
2 know on the record that there's information and you have
3 an answer but you can't give that answer because of the
4 instruction.

5 Do you understand what I just said?

6 A. Yes. I believe so.

7 Q. Okay. So I am just trying to understand, what
8 did Province think about the proposed settlement and
9 what did it communicate about its thoughts about the
10 proposed settlement? You've testified that Province had
11 input, so I'm asking you, what was that input?

12 MR. MANN: Objection to form.

13 MR. MATOTT: Objection. Again, to the extent
14 you're asking for a communication, to be specific, and
15 that calls for a privileged communication, we would
16 direct Tanner not to answer that question.

17 A. Without, you know, crossing one way or another, I
18 would say Province was involved and fulfilled its, you
19 know, role per its engagement letter.

20 BY MR. STROTHER:

21 Q. Okay. I don't want to put words in your mouth,
22 but is your testimony that Province had input, and based
23 upon the instruction, you can't tell me that input,
24 because Province gave that input as part of some joint
25 interest privilege?

1 A. Yeah, I would say that Province -- Province
2 provided feedback, you know, throughout the course of
3 this settlement process, without trying to get into the
4 details of --

5 Q. And --

6 A. -- what -- and I'll -- I guess I'll tell you that
7 I'm not giving all of the detail because of the
8 privilege that the attorneys instructed me on.

9 Q. So far I don't think you've given me any detail,
10 respectfully, so -- and I am trying to get the detail.
11 That's one of the main reasons I'm here.

12 So you can't tell me because of the instruction?
13 I just need to know that you gave input; because of the
14 instruction, you're not telling me what that input was.
15 But, again, I don't want to put words in your mouth. I
16 just need to understand where we are in this
17 examination.

18 A. I would say that's fair that Province provided
19 input, but I cannot talk about the detail of the input.

20 MR. STROTHER: Okay. I think this is an
21 appropriate time for me to take a break and think about
22 how the rest of this examination is going to go. Can we
23 have a five-minute break?

24 MR. MANN: Yeah. That's fine.

25 ///

1

* * *

2

(RECESS TAKEN FROM 9:43 A.M. TO 9:53 A.M.)

3

* * *

4

MR. STROTHER: Okay. We're back on the record.

5

BY MR. STROTHER:

6

Q. Mr. James, does Province have an opinion about
the proposed settlement agreement?

8

MR. MATOTT: Objection to the extent he's not
here testifying on behalf of Province. He's a 30(b)(6)
for the debtor.

11

MR. STROTHER: I can rephrase the question.

12

BY MR. STROTHER:

13

Q. On behalf of the debtor, do you have an opinion
about the proposed settlement agreement?

15

A. My understanding is that Province supports the
settlement, generally speaking.

17

Q. When you say that's your understanding, aren't
you the person at Province that is probably best poised
to answer that question?

20

A. Sure.

21

MR. MANN: Objection to form.

22

BY MR. STROTHER:

23

Q. Did the debtor perform any assessment of the
proposed settlement agreement?

25

MR. MANN: Objection to form.

1 A. Yes. I would say that the debtor collectively as
2 professionals thoroughly considered the proposal and the
3 situation and moved forward in the best interest of the
4 debtor.

5 BY MR. STROTHER:

6 Q. Is there any written assessment that the debtor
7 has done, including you on behalf of the debtor, of the
8 proposed settlement agreement?

9 A. I don't know that there are any formal internal
10 memos. There's certainly privileged correspondence and
11 then the declarations on the record that explain the
12 situation more broadly.

13 Q. Is a written assessment of a proposed settlement
14 agreement something that you have done in the past?

15 MR. MANN: Objection to form and to relevance.

16 MR. STROTHER: He's here for the debtor. Well,
17 I'll continue, but you're supposed to withhold your
18 relevance objections.

19 MR. MANN: Oh, sorry.

20 MR. STROTHER: That's okay.

21 BY MR. STROTHER:

22 Q. You can answer.

23 A. I apologize. Can you please restate.

24 Q. Sure.

25 Have you prepared written assessments of proposed

1 settlement agreements in the past?

2 A. In my time at Province, I've assessed a variety
3 of situations, probably some including settlements, yes.

4 Q. So, as you sit here today, do you have -- on
5 behalf of the debtor, do you have a general
6 understanding of what the debtor's assets are?

7 A. Yes.

8 Q. Is the claim against Cole Kepro one of those
9 assets?

10 A. I would probably characterize it that way, yes.

11 Q. What's the value of that asset?

12 A. As it stands, I believe the value of the asset is
13 the settlement agreement that was put forth on the
14 docket.

15 Q. Well, you're aware that Mr. McAlary has made an
16 offer for that claim against Cole Kepro to purchase it
17 for \$1 million cash; correct?

18 A. Yes. That sounds correct.

19 MR. MATOTT: Objection.

20 BY MR. STROTHER:

21 Q. So what is -- tell me what the proposed
22 settlement agreement with Cole Kepro is. What are the
23 terms?

24 A. Generally, it's for about \$850,000 in the form of
25 a promissory note with an intercreditor agreement in a

1 relatively short -- what I'd call maturity, I guess, and
2 it's collateralized by assets of CKI.

3 Q. And specifically, it's collateralized by the
4 proceeds from an insurance claim that Cole Kepro has or
5 will make on an insurance policy that the carrier is
6 Euler; correct?

7 MR. MANN: Objection to form.

8 MR. MATOTT: Objection.

9 A. I guess I'd ask my attorneys.

10 THE WITNESS: Am I allowed to talk about this
11 with the confidentiality -- or the NDA?

12 MR. MANN: So he's asserting that Cole Kepro --
13 they gave him documents underneath a nondisclosure
14 agreement. And so he's concerned of him talking -- of
15 addressing these issues could be in breach of that said
16 agreement.

17 MR. MATOTT: And can I -- I think (inaudible) an
18 important point too. Are we able to designate this
19 entire deposition as confidential to the extent it seeks
20 information? Is that a way around this, Dan, so he can
21 answer, and we can reserve on --

22 And, Justin, you tell me your thoughts. We can
23 kind of reserve on if you guys are going to file this in
24 a public filing. I'm thinking in real time here. I
25 guess you guys said Mr. McAlary is not party to that

1 NDA, so I don't know if that's a way around it. But
2 just kind of thinking in real time how we address this.

3 MR. MANN: I mean, if this is -- I guess if this
4 is like potential evidence that you would want to put up
5 in the evidentiary hearing, then, yeah, we would need to
6 file something, I think, with the court before that this
7 is going to be introduced and under seal. I think that
8 would be the way to get around it, if we can stipulate
9 now that that's -- anything that he is saying could be
10 under seal.

11 MR. MATOTT: And to state for the record too, the
12 committee hasn't seen this NDA. I'm not aware of the
13 terms of it. I don't think the committee's a party to
14 the NDA. So I guess I would want to look at that before
15 we opine further on what to do.

16 MR. STROTHER: First and foremost, I don't want
17 to concede the ultimate position that this is somehow
18 confidential and protected by a contract that I haven't
19 seen. But I am interested in trying to figure out if
20 there's a way to get the testimony from Mr. James that
21 I'm seeking.

22 I might need to discuss with you how, practically
23 speaking, this will work. In fact, I'm not familiar.
24 Is there a protective order in place in the bankruptcy?

25 MS. CICA: No.

1 MR. MANN: This is -- I believe it's all back end
2 where, for them to do the assessment, they received the
3 documents, but it was under agreement that they were
4 going to get these -- these documents with them not --
5 you know, with this NDA.

6 MR. STROTHER: Well, I haven't asked about the
7 documents or information from Cole Kepro yet, I don't
8 believe. Not to say I don't want to ask those
9 questions, but right now, I'm just, you know -- we were
10 talking about the value of the claims against Cole
11 Kepro. And so I would suggest that if the answer to the
12 question when I'm asking about the value is, "Well, it's
13 850- because of documents that I looked at that I can't
14 tell you about," then we cross that bridge when we get
15 to it.

16 Specifically, I was just asking about the
17 claim -- the insurance claim that Cole Kepro has
18 purportedly against Euler, a policy where Euler is the
19 carrier. And that's all over -- I mean, that's in
20 you-all's motion, so I'm not sure how that's
21 confidential or privileged. So maybe you're looking
22 down the road and what I'm asking is not actually asking
23 for anything that violates a confidentiality agreement.

24 But here, from the seat of our pants, I think we
25 just have to keep asking questions, and if you're not

1 going to answer because it's based upon the privilege
2 that has been discussed or an NDA with the defendant in
3 a lawsuit brought by the debtor, then I guess we're --
4 got to go with that.

5 MR. MANN: And, yeah, because -- for us, we've
6 never got that agreement from them to review it
7 ourselves of what the scope of that agreement is. So we
8 would have to rely on what his -- you know, his
9 testimony is. If he says, "Hey, this is under the NDA;
10 I can't disclose on it," then, yeah, we'll just have to
11 take his word for it. And then if it's something that
12 you feel like it's a deficient examination, then, yeah,
13 we can, you know, reissue it and come back later, if
14 need be, and we can review the NDA and see if it's
15 something that can be disclosed at that time.

16 MS. CICA: So the motion says that, you know, the
17 debtor reviewed the financial statements and determined
18 that Cole Kepro was going to file bankruptcy if there is
19 a judgment in this case. I'm not sure how that gets
20 proved by a preponderance of evidence if we can't ask
21 questions about it.

22 MR. MATOTT: So I just want to be clear. I don't
23 think that we had a privilege objection for this or
24 directed him not to answer. I'm just responding to the
25 fact that his answer -- and I'm not trying to direct him

1 or coach him or otherwise -- was that he couldn't answer
2 because of an NDA. I leave it to Justin, you know, how
3 to prod that. But I just wanted to state that I don't
4 think we're making a privilege objection or necessarily
5 saying this isn't something that he can answer.

6 MR. STROTHER: Well, that's a good point. Thank
7 you for that. Because, as I understand it, the
8 committee hasn't seen the NDA and ostensibly hasn't seen
9 the documents that Mr. James has looked at. It sounds
10 like debtor's counsel hasn't seen the NDA, and I don't
11 know if you've seen the documents or not, but.

12 BY MR. STROTHER:

13 Q. So I'm not even sure that we're to the point
14 where the NDA or what you learned from the NDA is
15 relevant yet. I'm still talking about the value of the
16 claims against Cole Kepro, so --

17 MR. STROTHER: Go ahead.

18 MR. MATOTT: Just one thing to clarify is that,
19 from my understanding, I'm not aware of what NDA he's
20 talking about. I'm not -- I don't want to represent the
21 committee hasn't seen some specific NDA, but -- I think
22 it was just unclear to me what NDA it was, so --

23 MR. STROTHER: Okay.

24 MR. MATOTT: -- just to be clear.

25 MR. STROTHER: I get it. Tell me if my

1 interpretation is inaccurate. What I mean to say is
2 counsel for the committee has not reviewed the NDA that
3 was presented to Mr. James and executed by Mr. James.

4 THE WITNESS: Should we ask general counsel for
5 Province or -- I don't know.

6 MR. MANN: Well, they -- so this is how it's
7 going to go. He'll ask the questions, and you respond
8 the best of your ability. And like -- I don't want to
9 coach him again, but -- like it's your response on
10 behalf of the debtor. And you make that call. And we
11 as attorneys afterwards from this deposition, if we feel
12 like there's -- you know, that this was deficient of
13 their examination, we will follow up, and we can then go
14 look at this NDA and review it further and see if we
15 need to reissue a new examination.

16 Is that kind of like where we would be at if he
17 keeps responding that way?

18 MR. STROTHER: I think so.

19 BY MR. STROTHER:

20 Q. So let's hypothetically speak. If every question
21 I ask you for the rest of this day, you're instructed
22 not to answer because of a joint interest privilege or
23 you felt like you couldn't answer it because of an NDA
24 with Cole Kepro, then we would try to work it out with
25 the attorneys -- hopefully today or maybe later -- and

1 if that didn't work, we would go to the court. This
2 happens sometimes, but it doesn't usually happen in a
3 30(b)(6) deposition, because you're the one that's been
4 designated to talk about these things. But I agree with
5 what Daniel just said.

6 MR. STROTHER: I called you Daniel. Do you
7 prefer Daniel or Danny, on the record?

8 MR. MANN: Either's fine.

9 BY MR. STROTHER:

10 Q. But I agree with what he said. It sounds like
11 it's your call. You're the only one in this room that
12 is familiar with the NDA right now. And so if I ask you
13 a question that you believe you cannot answer because of
14 the NDA, I think what the rules require you to do is
15 say, "I can't tell that you because of an NDA that I
16 executed" blank.

17 A. Yeah, I'm happy to try to answer everything as
18 best I can. I definitely don't want to be difficult. I
19 just don't want to expose myself or Province or the
20 company to liability on accident, because I'm not an
21 attorney, so.

22 Q. Got it. Well, let's go back to what my actual
23 questions were and see where that takes us.

24 A. Sure.

25 Q. My question was, what were the terms of the

1 proposed settlement agreement, which are public. I
2 believe you answered about \$850,000 of short-turnaround
3 promissory note secured by assets of Cole Kepro?

4 A. Yes. That sounds right.

5 Q. And I asked a question about, Well, it's secured
6 by a claim made against an insurance policy. Do you
7 remember that question from me?

8 A. Yes.

9 Q. Let me ask a different question. What assets of
10 Cole Kepro secure the promissory note that's part of the
11 proposed settlement agreement?

12 A. My understanding from the settlement documents is
13 that it's secured by insurance assets or an insurance
14 policy --

15 Q. Okay.

16 A. -- is probably how it was phrased.

17 Q. So let me -- let me test now the limits of the
18 NDA as far as you believe that your answers are going to
19 be restricted.

20 Has an insurance claim been accepted by Cole
21 Kepro's insurer?

22 A. I actually don't know if it's been formally
23 accepted or not.

24 Q. Do you know if it's been informally accepted by
25 Cole Kepro's insurer?

1 A. I don't know that it's -- I actually honestly
2 don't know that it's even been submitted. I'm not
3 familiar enough with their operations.

4 Q. Have you, Tanner James, been corresponding or
5 speaking directly with anyone on Cole Kepro's behalf?

6 A. On Cole Kepro's behalf?

7 Q. Right.

8 A. So for Cole Kepro?

9 Q. Right.

10 A. No. I would say that's probably not accurate.

11 Q. Okay. So from where does your information come
12 regarding the status of Cole Kepro's insurance claim?

13 A. Cole Kepro has provided us -- us, me included --
14 certain documents related to the circumstances of the
15 settlement under an NDA, including some high level
16 information about insurance policies, yes.

17 Q. What kind of high level information have you
18 reviewed?

19 A. I don't know that I can talk about the contents
20 of the documents.

21 Q. Okay. Because of the NDA you described earlier?

22 A. Yes. Out of caution.

23 Q. Okay. Do you believe that you're able to tell me
24 the kinds of high level information that you reviewed
25 and not tell me the content and be within the boundaries

1 of that NDA?

2 A. I guess what I could say is maybe I can confirm
3 that there is an asset of Cole Kepro that exists related
4 to this settlement and the security of that note.

5 MR. STROTHER: I have an idea. Why don't we go
6 off the record.

7 MR. MANN: Okay.

8 (Discussion off the record.)

9 ***

10 (RECESS TAKEN FROM 10:09 A.M. TO 10:24 A.M.)

11 ***

12 BY MR. STROTHER:

13 Q. All right, Mr. James. Off the record, we
14 collectively gave a phone call for counsel for Cole
15 Kepro, and we're all anticipating an email from him that
16 should authorize you to testify today about your
17 knowledge regarding the status and surrounding
18 circumstances of Cole Kepro's bad debt insurance claim
19 and also what your knowledge is of Cole Kepro's
20 financial status that leads -- that led to the filing of
21 the 9019 motion. Okay?

22 A. Yes.

23 Q. I'm going to do my best to not probe at those
24 exact specific questions until we get that email. So if
25 you think I am asking a question that is delving in

1 there, just let me know, and I'll back off for the time
2 being and go somewhere else.

3 Okay. What led us down this path many minutes
4 ago was I asked you what the value was of the debtor's
5 claim against Cole Kepro. And I believe I can summarize
6 your testimony as it being represented by the proposed
7 settlement agreement. Is that accurate?

8 A. Yes. That's accurate.

9 Q. And I guess my direct question to you is, how do
10 you value the proposed settlement agreement? By "how,"
11 I don't mean mechanically, though I might ask you
12 mechanically -- mechanically how you value it, but what
13 is the value of the proposed settlement agreement?

14 MR. MANN: Objection to form.

15 A. Sure. I think at its face, the value of the
16 proposed settlement agreement is the amount of the
17 promissory note, which is, it's my memory, \$850,000.

18 BY MR. STROTHER:

19 Q. How do you say that in the face of a \$1 million
20 cash offer with no contingencies from Mr. McAlary for
21 the same claim?

22 MR. MATOTT: Objection.

23 A. Sure. Looking at my memory of the McAlary offer,
24 I believe at least one component of it, you know, the
25 cash consideration aside, was -- you know, were things

1 like contingency on court approval in the bankruptcy
2 court, among other factors that also need to be assessed
3 in the value and viability of that proposal relative to
4 the other that we have.

5 BY MR. STROTHER:

6 Q. So, I mean, the Cole Kepro proposed settlement is
7 contingent upon bankruptcy court approval. True?

8 A. Yes. I believe so.

9 Q. So that shouldn't be a difference that would
10 reduce Mr. McAlary's offer to be worth less than a
11 million, should it?

12 A. So without getting too far into the details of
13 privilege -- I guess is what I'd clarify -- the
14 information that we've been given, you know, by Cole
15 Kepro, it would bring concern of the ability for maybe
16 one to close over the other.

17 Q. I don't understand that answer. And it's not the
18 part of your answer about privilege; it's the last part.

19 A. Sure.

20 Q. Sincerely I just don't even understand -- I don't
21 understand what you're saying. Can you try again?

22 A. Sure. To clarify, our assessment of the
23 information that has been provided to us related to Cole
24 Kepro -- which is probably spelled out also in my
25 declaration -- and particularly the financial state of

1 Cole Kepro, partied with that contingency in Chris's
2 offer of contingent on approval by the bankruptcy court,
3 you know, at its face may bring question as to whether
4 or not a proposal put in front of the court involving
5 Chris and an immediate response of some type of
6 bankruptcy by Cole Kepro could cause that transaction to
7 not close.

8 Q. So if that contingency were removed in one way or
9 another, would Mr. McAlary's offer be actually better
10 than Cole Kepro's offer?

11 MR. MANN: Objection to form.

12 A. I don't know that it would be appropriate to make
13 that assessment in its entirety right here right now, as
14 there are a variety of factors that have to be, you
15 know, accounted for in that offer when comparing them,
16 if the offer were to change materially right now.

17 BY MR. STROTHER:

18 Q. Well, I'm not agreeing with you that the offer
19 would change materially. So tell me what you believe
20 the contingencies are from Mr. McAlary.

21 A. Sure. I'd like to caveat that I'm not an
22 attorney, and this is from my understanding of
23 proposals. But I would certainly want legal input from
24 the attorneys on other aspects, as the contingency on
25 court approval is probably just one of many components

1 that would need to be weighed against each other.

2 Q. But you don't know what the other components are?

3 A. Sure. I can give another example.

4 MR. MATOTT: Objection.

5 A. Another example may be -- my understanding and
6 also at its face -- allocations to specific parts of
7 proposals -- of the McAlary proposal. My understanding
8 is that it's for a variety of assets, not just one
9 single asset. And though at its face, the cash amount
10 is higher collectively, the individual litigations and
11 claims need to be assessed independently. And it may be
12 difficult to do so if they're all contingent on each
13 other in Chris's proposal where the claims are a
14 package, for lack of a better term.

15 BY MR. STROTHER:

16 Q. So you and I may not be on the same page. Is it
17 your -- are you aware that Mr. McAlary has made a
18 \$1 million cash offer for solely the Cole Kepro
19 litigation -- the claims against Cole Kepro?

20 MR. MATOTT: Objection. Objection to form.

21 A. That sounds right. I've seen various iterations
22 of this proposal and just gave an example of how the
23 assessment happened between the --

24 BY MR. STROTHER:

25 Q. I just want to focus on the one that seems

1 simplest, which is \$1 million cash --

2 A. Sure.

3 Q. -- versus 850 million -- \$850,000 supported by a
4 promissory note by an entity that the debtor believes is
5 on the cusp of bankruptcy. I want you to tell me, why
6 does the debtor believe \$1 million cash is somehow not
7 better than \$850,000 by a promissory note by a company
8 that has explained to the debtor that it's on the cusp
9 of bankruptcy?

10 A. Sure.

11 MR. MATOTT: Objection to form.

12 A. And again erring on the side of caution, I
13 believe another example and reason put forward on the
14 docket -- maybe it was in Mr. Ayala's declaration -- was
15 potentially the collectibility of those proceeds from
16 Mr. McAlary.

17 BY MR. STROTHER:

18 Q. So when evaluating -- and I'm asking about the
19 debtor right now. When the debtor evaluated these
20 competing offers, the debtor looked at what the claims
21 brought by the committee against Mr. McAlary were worth
22 or whether they could even be won or collected?

23 MR. MANN: Objection to form.

24 MR. MATOTT: Objection to form.

25 A. I believe that, you know, there are a variety of

1 factors that need to be considered with
2 collectibility -- with respect to collectibility from
3 Mr. McAlary. I would certainly and maybe not
4 unreasonably assume that there would be difficulties not
5 only maybe getting that approved with the current state
6 of derivative standing with the committee's claims
7 against Mr. McAlary, but also even just financial
8 collectibility relative to what -- the information we
9 have about Cole Kepro.

10 BY MR. STROTHER:

11 Q. Has the debtor looked at collectibility from
12 Mr. McAlary regarding the claims brought by the
13 committee against Mr. McAlary?

14 A. I'm not entirely the closest person to that
15 particular topic. But certainly, I'm sure it's
16 something that's been considered at least by the other
17 professionals.

18 Q. Did the debtor discuss with the committee whether
19 the committee would object to a settlement between the
20 debtor and Mr. McAlary -- I'm sorry. Not a settlement.
21 A -- strike that. A settlement. Let me ask the
22 question again.

23 Has the debtor spoken with the committee about
24 whether the committee would object to any settlement
25 with Mr. McAlary?

1 MR. MANN: Objection to form.

2 MR. MATOTT: Objection. Privilege objection. To
3 the extent that calls for anything under the common
4 interest privilege, I would direct the deponent not to
5 answer.

6 MR. STROTHER: And so my -- my point here is,
7 Andrew, there's no possible way there's a joint interest
8 between the committee and the debtor in that situation
9 when we're talking about a settlement between
10 Mr. McAlary and the debtor. I mean, we don't have to
11 have that argument right now.

12 BY MR. STROTHER:

13 Q. But I guess you need to evaluate whether that's a
14 good instruction or not, so answer if you can.

15 Have there been any conversations between the
16 debtor and the committee about whether the committee
17 would object to a settlement between the debtor and
18 Mr. McAlary?

19 MR. MANN: Objection to form.

20 MR. MATOTT: Same objection on privilege grounds,
21 and I would direct the deponent not to answer.

22 A. I'm not going to answer that at direction of
23 counsel.

24 BY MR. STROTHER:

25 Q. Okay. Just to be clear, Mr. Matott and his firm

1 doesn't represent the debtor or you or Province;
2 correct?

3 A. I would say Mr. Matott and Seward & Kissel
4 represents the committee. But my understanding is
5 there's a joint interest agreement in place between the
6 debtor and the committee.

7 Q. Is it a written joint interest agreement? If you
8 know.

9 A. I believe so. I'm not an attorney responsible
10 for that work stream, so I defer to counsel.

11 Q. Do you know what that interest agreement says
12 with regard to the scope of the joint interest?

13 A. I don't know that I could spell it out in legal
14 terms, but I do know that I've been directed by
15 counsel -- informed by counsel that there is a joint
16 interest agreement in place.

17 Q. Okay. We have received the email from Lee
18 Keller. I'm going to show you my laptop, Mr. James.

19 A. Great. I can see that.

20 Q. So let's make sure that we're on the same page.
21 Mr. Keller on behalf of Cole Kepro has emailed the
22 various -- I think all of the attorneys that are present
23 at this deposition right now. And tell me if I'm
24 reading this correctly.

25 "Per our conversation a few minutes ago, on

1 behalf of Coin Cloud, Tanner James is permitted to
2 answer questions regarding the nature and status of
3 CKI's insurance claim and CKI's financial condition."

4 Did I read that correctly?

5 A. Yes. That looks right to me.

6 Q. Okay. What's your knowledge of the status of
7 Cole Kepro's insurance claim?

8 A. I believe, as I said before, I'm not entirely
9 sure today what the status of that claim is. I do know
10 that Cole Kepro has informed us that there is an
11 insurance policy related to this matter that they would
12 look to exercise.

13 Q. What's your understanding of what the debtor
14 would have to do to make a claim by Cole Kepro feasible?

15 A. I apologize. Could you please --

16 MR. MATOTT: Objection.

17 A. -- rephrase your question.

18 BY MR. STROTHER:

19 Q. Sure.

20 Tell me if my understanding is correct. To
21 support the settlement, it's true, isn't it, that the
22 debtor would have to allow Cole Kepro's claim?

23 A. That sounds correct to me.

24 Q. Okay. And do you know whether that aspect of the
25 transaction and the required behavior by the debtor has

1 been discussed with Cole Kepro's insurer?

2 MR. MATOTT: Objection to form.

3 A. I'm not familiar with -- I guess what I'd say, my
4 knowledge isn't that deep in Cole Kepro's operations and
5 affairs with its own third parties.

6 BY MR. STROTHER:

7 Q. Do you know whether anyone on behalf of the
8 debtor or the committee has spoken with Cole Kepro's
9 insurer?

10 MR. MATOTT: Objection.

11 A. Not that I'm aware of, but I wouldn't say that
12 precludes the possibility of it.

13 BY MR. STROTHER:

14 Q. And I used the verb "spoken." Let me ask the
15 same question to make sure it includes other kinds of
16 communications.

17 Do you know whether anyone on behalf of the
18 debtor or the committee has communicated directly with
19 Cole Kepro's insurer?

20 MR. MANN: Objection to form.

21 A. Not that I'm aware of. But, again, I would say
22 that wouldn't preclude the possibility.

23 BY MR. STROTHER:

24 Q. As you sit here today as the representative for
25 the debtor, do you have any understanding one way or the

1 other about what the insurer's position regarding
2 whether it is going to pay that claim to Cole Kepro -- I
3 lost myself in that question. It gets long sometimes.

4 As you sit here today, do you have any knowledge
5 one way or the other about what Cole Kepro's insurer's
6 position is on whether it's going to pay the claim or
7 not?

8 MR. MANN: Objection to form.

9 A. I guess anything that I would know about that
10 would be speculative and probably something that
11 somebody told me in a conversation, but I haven't seen
12 anything otherwise.

13 BY MR. STROTHER:

14 Q. Well, I don't want you to speculate, but if
15 someone told you something in a conversation that led
16 you to believe that there has been direct
17 communications, I do want you to tell me that.

18 A. Again, I don't know of any communications with
19 debtor or committee representatives. Again, wouldn't
20 say that precludes the possibility of it. My knowledge,
21 I don't know of one correspondence or any type of
22 communication. But I would say the estate professionals
23 have been pretty thorough, so.

24 Q. Which professionals?

25 A. Specifically, I'd say the debtor professionals,

1 Province and debtor counsel. And I'm sure the other
2 interested parties in this settlement have also been.

3 Q. Are you aware of anyone evaluating the likelihood
4 of the insurer paying the claim?

5 A. I'm aware of people discussing that, yes.

6 Q. Does the debtor have a position on the likelihood
7 of the insurer actually paying that claim?

8 A. Yes. I believe the debtor -- the debtor's
9 position is that the insurance claim is collectible and
10 is, you know, part of the reason why the settlement was
11 put forward.

12 Q. Why does the debtor believe that?

13 MR. MANN: Objection to form.

14 A. I would leave that assessment to counsels. I'd
15 probably put it in the court of a legal analysis.

16 BY MR. STROTHER:

17 Q. Do you know whether the debtor has retained
18 insurance counsel to evaluate the likelihood of that
19 claim being paid?

20 A. I would generally say that would be a decision
21 I'd leave with counsel. And their, you know -- their
22 assessment of whether that's necessary, I'd defer to
23 them.

24 Q. Understood. So the answer is you're not aware of
25 whether it's happened or not?

1 A. It may have happened internally at Fox Rothschild
2 or one of the other estate professional's firms, but
3 it's not something that I would have been involved with,
4 as it's not my expertise and place to weigh in.

5 Q. Have you received any information from Cole Kepro
6 regarding the status of the insurance claim?

7 A. Not to my knowledge, no. I've received the
8 policy.

9 Q. What did you do with the policy?

10 A. I reviewed the policy.

11 Q. For what purpose?

12 A. As part of my assessment of the asset and its
13 relevance to the settlement.

14 Q. What did you determine after reviewing it?

15 A. I, along with -- I, along with the team at
16 Province -- our assessment was the asset exists, and
17 along with other assessments of the larger settlement,
18 that it was an asset that could be encumbered by a
19 promissory note for \$850,000 with an intercreditor
20 agreement in place and was a viable path forward to
21 monetize the asset of the claims against Cole Kepro --
22 is probably the best way to put it.

23 Q. Did the debtor do anything -- did you do anything
24 other than review the policy to confirm that -- to reach
25 that conclusion that it was a viable path forward?

1 MR. MANN: Objection to form.

2 A. I guess when I say my review of the policy, I
3 didn't simply just, you know, read the words on the
4 page. I took into account what the policy was for and
5 the applicability of that particular asset of Cole
6 Kepro's to the settlement.

7 BY MR. STROTHER:

8 Q. But you haven't asked Cole Kepro for
9 communications between Cole Kepro and the insurer?

10 A. That is not a request that I'm aware of, no.

11 Q. And it's just -- I'm asking whether -- you,
12 Tanner James, you haven't, have you?

13 A. No, I have not.

14 Q. Why not? Isn't that something that you think
15 should be part of due diligence?

16 MR. MANN: Objection to form.

17 MR. MATOTT: Objection.

18 A. I would say that that's probably a route that you
19 could take in diligencing this particular settlement,
20 yes.

21 BY MR. STROTHER:

22 Q. Wouldn't you want to know that the policy was
23 paid up to date so that it's actually effective before
24 accepting the settlement?

25 MR. MATOTT: Objection to form.

1 A. I believe that there are -- there's likely an
2 endless amount of diligence that you could do on Cole
3 Kepro and its financial state, all aspects of the
4 insurance policy. But at that particular time, it was
5 seen as likely the only viable path forward, and, you
6 know -- especially when paired with the unresponse --
7 the lack of response that we got in interest for this
8 particular asset and the urgency of the debtor's
9 financial state and moving forward and finding
10 resolution to the Chapter 11 bankruptcy as a whole.

11 MR. STROTHER: Would you mind reading that answer
12 back to me, please.

13 (Record read.)

14 BY MR. STROTHER:

15 Q. When you said "only viable path forward," what
16 were you referring to?

17 A. Sure. For the same reasons that I discussed
18 earlier. I'd say that at that time, it was the only
19 viable path forward because the other offer that we had
20 received was not at that time -- and today still -- seen
21 as a viable path forward.

22 Q. And my question is, what are you referring to as
23 the "path" when you say "only viable path forward"?

24 A. The path of entering a 9019 settlement with Cole
25 Kepro.

1 Q. Okay. What happens to the settlement if Cole
2 Kepro's insurer does not pay on that claim?

3 MR. MANN: Objection to form.

4 A. I believe that the \$850,000 promissory note would
5 still have at least a claim against Cole Kepro. I'd
6 defer to the lawyers on the legal analysis of what that
7 might look like in a bankruptcy or some other situation.

8 BY MR. STROTHER:

9 Q. Okay.

10 A. It's entirely speculative.

11 Q. Did you personally conduct an analysis of Cole
12 Kepro's financial status?

13 A. Yes.

14 Q. What's your conclusion?

15 A. My conclusion on my review of Cole Kepro's
16 financial state was that they had run to a fork in the
17 road with respect to their cash on hand. Their cash
18 balance appeared to be depleting. Their cash burn over
19 the last, I'd say, three months in the year prior to
20 that showed a loss. The current liabilities were
21 greater than the liquid assets. There were large
22 uncollectible accounts receivable balance -- balances on
23 their books and an excess of \$20 million of secured
24 debt, in addition to a negative retained earnings on the
25 books, which was both reflected by their 2023 financials

1 that they provided and the prior year's tax returns that
2 were filed for the company.

3 Q. So thank you for those observations.

4 Do you have a conclusion about their status and
5 whether they are liquid or not liquid?

6 A. My conclusion about my review of Cole Kepro's
7 financials was largely that the company did not have the
8 assets to satisfy its liabilities as I understood them;
9 its operations were not yielding profits that, what,
10 turned around that situation in any reasonable amount of
11 time; and that discretion of the management and the
12 owners of the company would likely play a large role in
13 the future of that business, which I had not heard
14 optimistic things about in our discussions with Cole
15 Kepro's management.

16 Q. How important to you is your understanding of
17 Cole Kepro's financial status to the debtor's support of
18 the proposed settlement with Cole Kepro?

19 MR. MANN: Objection to form.

20 A. I would say that Cole Kepro's financial state is
21 a very important part of the circumstances of this
22 settlement and overall even the claims the debtor holds
23 against Cole Kepro because of issues with collectibility
24 if Cole Kepro were to file for bankruptcy. In my
25 understanding as a restructuring professional, those

1 litigation claims would be diminished significantly in
2 value if the debtor was to pursue claims against Cole
3 Kepro and they were to file for bankruptcy.

4 BY MR. STROTHER:

5 Q. Have you participated in communications with Cole
6 Kepro's counsel?

7 A. I don't know that I've personally communicated
8 with Cole Kepro's counsel; primarily, their management
9 team.

10 Q. Okay. Did Cole Kepro's management team ever
11 communicate to you that Cole Kepro filing bankruptcy in
12 the future is a possibility?

13 A. Yes. They did, in fact, tell me that it was a
14 distinct possibility.

15 Q. Did you independently evaluate and reach a
16 conclusion about whether you believe it's a distinct
17 possibility?

18 A. After our initial conversation with Cole Kepro
19 where they disclosed the possibility of them filing for
20 bankruptcy, we requested additional information to
21 understand the circumstances of the company, which is
22 how we gained access to their financials and various
23 other items that they provided us. And we concluded on
24 our assessment of those financials and items that they
25 provided us that Cole Kepro's financial state was not in

1 good standing. I would say that they are close to what
2 I consider a critical state if their operations and
3 balance sheet continues in the direction that I had seen
4 it going.

5 Q. So with that in mind, are you aware of anyone
6 evaluating the risk that Cole Kepro will actually never
7 pay the debtor a penny under the proposed settlement
8 agreement?

9 A. I believe there were privileged -- what I'd
10 probably consider privileged conversations about that
11 topic.

12 Q. Did you evaluate whether there is any risk that
13 Cole Kepro doesn't pay the \$850,000 pursuant to the
14 proposed settlement agreement due to Cole Kepro's
15 financial status?

16 MR. MATOTT: Objection that he's testifying on
17 behalf of the debtor.

18 MR. STROTHER: Okay.

19 MR. MANN: Yeah, it's just the objection to
20 scope, that this is you answering as the debtor.

21 THE WITNESS: Am I okay to answer?

22 MR. MANN: Yeah.

23 THE WITNESS: Okay.

24 I apologize. Could you please repeat your
25 question. I just lost the details of it.

1 BY MR. STROTHER:

2 Q. Sure.

3 With what you just said about Cole Kepro's
4 financial status and your conclusions, are you aware of
5 anyone evaluating the risk that Cole Kepro would not pay
6 the 850,000 -- not be able to pay the \$850,000 to the
7 debtor?

8 A. Yes. I'm aware of that being a consideration.

9 Q. And you're -- thank you for answering. I think
10 actually I went one question too far back.

11 My question actually was, did you evaluate the
12 risk?

13 A. I see. It was part of my assessment, and I also
14 believe that I saw that remedied by the security of the
15 promissory note and the maturity of the promissory note,
16 which were what I'd consider a short-term maturity. I
17 believe it was 60 days, something like that.

18 Q. Did you evaluate that, or are you testifying
19 about the evaluation that someone else did?

20 MR. MANN: Objection to form.

21 A. Yes. I certainly thought of the collectibility
22 as an issue and had seen it remedied by what I consider
23 terms of the settlement.

24 BY MR. STROTHER:

25 Q. So as you sit here today under oath, do you

1 believe there's 100 percent probability that if this
2 settlement is approved, Cole Kepro is going to pay it?

3 MR. MANN: Objection to form.

4 MR. MATOTT: Objection.

5 A. I don't know that I would ever say anything's
6 100 percent probability of happening. I would say that
7 there's a higher likelihood than other options that the
8 debtor has.

9 BY MR. STROTHER:

10 Q. Do you believe that there's a 90 percent or
11 higher probability that Cole Kepro is going to pay the
12 settlement if it's approved by the court?

13 MR. MANN: Objection to form.

14 MR. MATOTT: Objection.

15 A. I would refrain from putting any specific number
16 on the probability without having a material assessment
17 of that.

18 BY MR. STROTHER:

19 Q. Why didn't you do a material assessment of a --
20 of a proposal that the debtor submitted to the court for
21 approval?

22 A. Sure. And to clarify, I mean a material
23 assessment of the very specific question that you just
24 asked me right now, not that the debtor and the estate
25 professionals had not conducted at least an assessment

1 of the probability of collecting on that. I'm simply
2 just not willing to put a number arbitrarily on the
3 collectibility.

4 Q. Well, then, if you desire to stay away from
5 numbers, you can use words. I'm trying to understand
6 the debtor's position on what is the risk that Cole
7 Kepro is not going to be able to or decide not to pay
8 the \$850,000. And you've testified, I believe, that you
9 looked at the proposed settlement agreement and thought
10 that the remedy to collectibility was the security
11 interest. Do I understand your testimony correctly?

12 MR. MANN: Objection to form.

13 MR. MATOTT: Objection to form.

14 A. My understanding of the situation is that the
15 debtor has engaged in good faith negotiations with Cole
16 Kepro, negotiated the best terms possible, and selected
17 the best path forward in its view of what to do with
18 this particular asset, which involves entering a 9019
19 with Cole Kepro for an \$850,000 promissory note.

20 BY MR. STROTHER:

21 Q. And you are at least discounting Mr. McAlary's
22 offer to less than \$850,000, I take it?

23 MR. MANN: Objection to form.

24 A. I would say among other factors other than simply
25 discounting the cash value of it. The debtor has

1 assessed both offers and decided that the path of
2 entering a 9019 with Cole Kepro for \$850,000 is the best
3 path forward.

4 BY MR. STROTHER:

5 Q. So these questions I'm asking you are right down
6 the middle of the plate on the 30(b)(6) notice --
7 right? -- which includes analysis, evaluation, and
8 assessment of the settlement proposed; analysis,
9 evaluation, and assessment of Mr. McAlary's offer. And
10 I understand you're telling me that the debtor has done
11 that and concluded that the deal with Cole Kepro is
12 better than the deal with Mr. McAlary. Right? That's
13 your testimony?

14 MR. MANN: Objection to form.

15 MR. MATOTT: Objection to form.

16 A. That sounds correct.

17 BY MR. STROTHER:

18 Q. And I want -- I want to understand why. I want
19 to understand what the debtor has done to reach that
20 conclusion. So I just want to be entirely clear that if
21 you're not understanding my questions, that's the point.

22 What is it specifically about Mr. McAlary's
23 \$1 million cash offer for the litigation against Cole
24 Kepro that leads the debtor to believe that it is a
25 less-beneficial-to-the-debtor offer?

1 A. I would say --

2 MR. MATOTT: Objection to form.

3 A. -- it's important not to understate the
4 difficulties that would come with closing on a
5 transaction or settlement with Mr. McAlary. Not only
6 for administrative or legal battles that may occur along
7 the way, but also for the distinct possibility that Cole
8 Kepro files for bankruptcy and diminishes the value of
9 those claims outside of a settlement with them. I think
10 that is an incredibly important aspect of this that
11 should not be under-weighted.

12 BY MR. STROTHER:

13 Q. Well, Mr. McAlary's offer comes with a warrant
14 that he is going to buy those claims against Cole Kepro
15 regardless of whether Cole Kepro declares bankruptcy or
16 not. So, I mean, do you know that? Are you aware of
17 that?

18 A. That sounds right to me.

19 MR. MATOTT: Objection.

20 BY MR. STROTHER:

21 Q. Then why do you in your analysis worry about Cole
22 Kepro's bankruptcy with regard to Mr. McAlary's offer
23 but you seem to think that it's not going to be a
24 problem collecting on the \$850,000 promissory note?

25 MR. MANN: Objection to form.

1 A. In the debtor's assessment of the settlement that
2 has been proposed with Cole Kepro, it has come to the
3 conclusion that it is more likely that the debtor will
4 be able to execute that transaction and see those funds
5 come to the estate than it would be to pursue a
6 transaction with Mr. McAlary and collect --

7 BY MR. STROTHER:

8 Q. But --

9 A. -- on that particular set of proceeds.

10 Q. But why? I've heard you say that, but I still
11 don't understand why the debtor believes that it's not
12 going to be able to get a million dollars cash from
13 Mr. McAlary.

14 MR. MANN: Objection to form.

15 BY MR. STROTHER:

16 Q. Do you know?

17 A. Sure. I'd reference back to the question you
18 asked earlier --

19 MR. MATOTT: Objection.

20 A. -- that resulted in my response of I believe it
21 was under privilege that those considerations were made.

22 BY MR. STROTHER:

23 Q. So I understand -- because I do want to make sure
24 that I'm getting the nonprivileged information from you,
25 because I do believe we're going to have to have a

1 conversation -- not with you -- the attorneys and
2 possibly the court about this privilege assertion. So
3 I'm inviting you to tell me what you can tell me outside
4 of the privilege.

5 Is it your testimony that the conclusion that --
6 strike that.

7 Is it your testimony that the debtor's reasoning
8 for believing that collectibility from Mr. McAlary
9 pursuant to a \$1 million cash offer is privileged and
10 you can't testify about it today?

11 MR. MANN: Objection to form.

12 A. My testimony is that I've tried to expand on the
13 circumstances that are outlined in my declaration --
14 and, to the extent I can, Mr. Ayala's declaration -- of
15 concerns about collectibility from Mr. McAlary, the
16 circumstances of the debtor's Chapter 11 case with
17 respect to derivative standing, and also the financial
18 state and distinct risk of Cole Kepro filing bankruptcy
19 and diminishing the value of those claims, all things
20 that, to my understanding, have been disclosed on the
21 docket. And to the extent there are other
22 considerations in the assessment of this path forward,
23 my testimony is that I believe those conversations
24 happened under privilege.

25 ///

1 BY MR. STROTHER:

2 Q. Let me direct your attention to your declaration,
3 and let's see how much you can tell me --

4 A. Sure.

5 Q. -- that supports those statements.

6 So, first of all -- and I'm happy to show it to
7 you, if you'd like to see it -- you don't declare
8 anything about Mr. McAlary's offer at all in your
9 declaration. Does that jibe with your recollection?

10 A. Generally, that sounds right.

11 Q. Okay. So let me focus about what you've declared
12 regarding the claims against Cole Kepro. You declared
13 in paragraph 6, "The debtor assessed the claims it had
14 against Cole Kepro and determined that because of Cole
15 Kepro's financial condition, pursuing litigation to
16 receive a judgment would not bear a net positive since
17 there was a high probability that the debtor would not
18 be able to collect on its judgment."

19 Do you still stand by that declaration today?

20 A. Yes.

21 Q. Okay. When you declared that "pursuing
22 litigation to receive a judgment would not bear a net
23 positive," what are the factors that go into creating a
24 positive or a negative when you made that statement?

25 A. Sure.

1 MR. MANN: Objection to form.

2 A. Cole Kepro's -- the debtor's claims against Cole
3 Kepro, to my understanding, primarily stem from
4 circumstances that happened prior to the debtor's own
5 petition for bankruptcy. Not only that, but also what
6 happened before a speculative Cole Kepro bankruptcy.

7 With that in mind, those litigation claims would
8 be prepetition unsecured claims. And then Cole Kepro's
9 bankruptcy, it would be -- you know, there's a
10 possibility, as always, of a zero percent recovery for
11 an unsecured claim, if not -- you know, oftentimes,
12 unsecured claims get 2, 3 percent recovery on their
13 prepetition claims. That, in conjunction with the cost
14 of pursuing those litigations potentially in bankruptcy
15 court, the costs would likely exceed the proceeds from
16 any recovery on those claims if there were to be a
17 judgment.

18 BY MR. STROTHER:

19 Q. Did you evaluate the likelihood of the debtor
20 actually winning the claims against Cole Kepro?

21 A. In my personal capacity, I've been, I'd say,
22 involved in discussions about the claims. I'm familiar
23 with the debtor's business. I'm familiar with the
24 debtor's assets. And to the extent management has
25 informed me of prepetition events that I was not engaged

1 as a professional for, I'm aware of those circumstances.
2 And I've certainly seen financial distress in the
3 debtor's business -- the debtor in this instance
4 obviously being Cash Cloud. And I have seen the
5 invoices for the kiosks related to the litigation and
6 heard Mr. McAlary's narrative of what happened. I'm
7 also aware of opinions being given by the counsel
8 responsible for pursuing those litigations as I
9 understand them today.

10 Q. That's Mr. Jimmerson?

11 A. Yes.

12 And additionally, I'm also aware of the brief
13 market testing that happened that yielded almost no
14 interest for those litigation claims.

15 Q. Did you -- you said you are familiar with
16 Mr. McAlary's -- what? -- summary or narrative of the
17 claims. Have you ever spoken with Mr. McAlary about the
18 claims himself?

19 A. Absolutely.

20 Q. Okay. The debtor has -- the debtor's position
21 about whether those kiosks were defective or not, that
22 hasn't changed, has it?

23 MR. MATOTT: Objection to form.

24 A. My understanding of the debtor's claim against
25 Cole Kepro come from the things that I just outlined. I

1 don't know that at this point I can give a legal opinion
2 on the validity of those claims other than I have not
3 seen a significant market value from those claims other
4 than the two offers that we've received and particularly
5 the one that the debtor has chosen to pursue in a
6 settlement with Cole Kepro.

7 MR. STROTHER: Respectfully object as
8 nonresponsive.

9 BY MR. STROTHER:

10 Q. My question is whether the debtor's position
11 about the kiosks being defective has changed or not.

12 A. I would refer you for lack -- for caution of not
13 misstating what's on the record, refer you to the
14 settlement agreement with Cole Kepro to the extent that
15 that's information available that's not privileged.

16 Q. Do you know whether, as you sit here, the
17 settlement proposal has the debtor stating that the
18 kiosks are not defective?

19 A. My understanding of the settlement --

20 MR. MATOTT: Objection.

21 A. -- is that the debtor is proposing that the
22 claims be allowed.

23 BY MR. STROTHER:

24 Q. Did you participate in the strategic decision for
25 the debtor to propose that the debtor is going to allow

1 those claims?

2 A. I was party to them, sure.

3 Q. Other than being a party, did you actually -- did
4 you have input?

5 A. Yes. I'd say through internal conversations at
6 Province with the principal on the matter and maybe --
7 as well as conversations with debtor's counsel, as far
8 as my direct input goes.

9 Q. Have you seen the email from the screen
10 manufacturer to Cole Kepro acknowledging or advising
11 that the screens were defective?

12 A. I'm aware, at the very least...

13 Q. You can answer.

14 A. I'm at the very least aware of the email from
15 Mr. McAlary. I believe I've seen it. But I don't want
16 to misspeak on that.

17 MR. STROTHER: Everyone, can we take a quick
18 break for bathroom and let my voice rest?

19 MR. MANN: Sure.

20 ***

21 (RECESS TAKEN FROM 11:10 A.M. TO 11:34 A.M.)

22 ***

23 BY MR. STROTHER:

24 Q. All right. Mr. James, are you ready to proceed?

25 A. Yes, I am.

1 Q. Okay. Thanks for the break.

2 A. Of course.

3 MR. STROTHER: By the way, off the record, we
4 just discussed likely breaking at noon for a lunch
5 break. It may be that at noon we all decide, No, we're
6 close. But I don't think so. I think we'll probably be
7 taking a lunch break.

8 BY MR. STROTHER:

9 Q. All right. Broadly speaking, how did this
10 proposed settlement with Cole Kepro actually get put
11 together? And by "put together," I mean who were the
12 parties or individuals that negotiated the deal and then
13 decided what the terms would be?

14 A. Sure. So initially Cole Kepro came to us, "us"
15 being Province. They indicated that they'd like to have
16 a conversation and initially informed us of their
17 financial state. Once that happened, negotiations with
18 them started about what a resolution might look like.
19 That went back and forth for some time, maybe two or
20 three weeks.

21 Q. Let me interrupt you for a moment. Who's
22 participating --

23 A. Sure.

24 Q. -- in those negotiations at that point?

25 A. Right. Province primarily at the beginning.

1 Q. Okay. Thank you.

2 Continue.

3 A. Negotiations developed, and there were points
4 where they slowed down, and we -- "we" being the
5 debtor -- thought maybe there isn't a settlement, and it
6 picked back up. As we got closer to what the settlement
7 is today, documents for a settlement started being
8 prepared. And I believe rather quickly after an
9 agreement was reached, everything was papered. And
10 there might have been some time before -- or between the
11 papering of those documents and the ultimate filing, but
12 just in ordinary course, I'd say negotiation with the
13 counterparty in consultation with the committee -- you
14 know, the committee had an active role in this, as they
15 do with everything else in the case.

16 Q. Was there a point during the negotiations that
17 the committee was participating to a greater extent than
18 the debtor?

19 A. I wouldn't say that that's fair. I would say
20 there was points where it was balanced. But for the
21 majority of maybe what I'd call the first half, it was
22 almost primarily the debtor.

23 Q. So the version of the proposed settlement that's
24 been filed with the court, we've gone -- you and I have
25 gone through what those basic terms are. Who was it

1 that suggested those terms?

2 MR. MATOTT: Objection to the extent it calls for
3 privilege.

4 A. I don't know that I could specifically reference
5 who proposed the exact terms of the entire agreement.
6 It was probably a conglomeration of a lot of different
7 opinions in conversations that happened that resulted in
8 an agreement.

9 BY MR. STROTHER:

10 Q. Okay. Who proposed that the -- who proposed that
11 the debtor would allow a nine-and-a-half-million-dollar
12 claim from Cole Kepro?

13 MR. MATOTT: Objection to the extent it calls for
14 privileged information.

15 I would direct you not to answer to the extent it
16 does.

17 MR. STROTHER: The identify of who proposed it
18 could somehow be privileged?

19 MS. CICA: As between the debtor and Cole
20 Kepro --

21 MR. MATOTT: When you're asking the specific
22 question of what content that was proposed and asking
23 who said that, absolutely.

24 BY MR. STROTHER:

25 Q. Did Cole Kepro propose that?

1 A. If it was proposed directly by Kepro, I'm not
2 entirely sure. I wouldn't want to say for certain
3 without knowing exactly who did. I didn't think I can
4 answer that, to be honest.

5 Q. Who can for the debtor?

6 A. I'm sure it's something privileged, a
7 communication that was privileged, since a lot of this
8 was.

9 MR. STROTHER: Is anyone in this room saying that
10 communications between the debtor and Cole Kepro are
11 privileged?

12 THE WITNESS: I apologize. To clarify, I'm
13 talking about any conversations that would have happened
14 between individuals of the debtor or the debtor and the
15 committee. I'm unsure if it was Cole Kepro that
16 originally proposed it.

17 BY MR. STROTHER:

18 Q. So my question was, who on behalf of the debtor
19 knows the answer to that question? You don't.

20 MR. MATOTT: Objection.

21 A. To clarify, I don't know that Cole Kepro
22 originally proposed it. I know that it was discussed by
23 estate professionals, which would be privileged.

24 BY MR. STROTHER:

25 Q. So I'm asking you, who on behalf of the debtor

1 would know who proposed that term?

2 MR. MATOTT: Objection.

3 MR. STROTHER: What's your objection, Andrew?

4 MR. MATOTT: Are we doing speaking objections?

5 MR. STROTHER: No. It's form.

6 MR. MATOTT: (Inaudible.)

7 MR. STROTHER: I just want to know what your form
8 objection is.

9 MR. MATOTT: Right.

10 MR. STROTHER: So the question is, who knows --

11 MR. MATOTT: He never said he didn't remember.
12 There was no -- he didn't say nobody knew or he didn't
13 remember. I directed him not to answer on privilege.
14 And I think you got the answer that you got and that
15 you're asking the question in a different way.

16 MR. STROTHER: I think you --

17 MR. MATOTT: I'm sorry. I'm happy to state the
18 form objection and not speak, if that's what you're
19 saying you want me to do.

20 MR. STROTHER: No. I can handle myself. You can
21 speak. But that's not -- I think you misheard my
22 question. My question is, who on behalf of the debtor
23 knows who proposed that term, period.

24 BY MR. STROTHER:

25 Q. So that's the simple question. Do you know who

1 on behalf of the debtor knows who proposed that the
2 debtor would accept a nine-and-a-half-million-dollar --
3 allow a nine-and-a-half-million-dollar claim by Cole
4 Kepro?

5 MR. MANN: Objection to form.

6 A. I don't remember who specifically initially
7 proposed it. It's something that we can find out. But,
8 again, it's --

9 BY MR. STROTHER:

10 Q. You're also misunderstanding my question.
11 You're -- you already told me you don't really know; is
12 that correct?

13 A. Sure.

14 Q. Okay. I'm asking you, who on behalf of the
15 debtor does know? Because I'm taking the debtor's
16 deposition today. So you don't know. I want to know
17 who does know so I can go depose that person.

18 A. Right. So, again, my answer is I would probably
19 want to look at the privileged records. I don't know
20 sitting here today. But anyone who would be
21 representing the debtor would do the same to answer your
22 question.

23 Q. Are you telling me you don't know who could
24 answer the question, or you know and you're refusing to
25 answer because of privilege?

1 A. I don't know that I could just pick somebody
2 right now and say for certain that they would be able to
3 answer that question, sitting in front you right now.
4 My suspicion would be that they would want to look at
5 whatever privilege records there are and confirm that,
6 and then answer the question correctly.

7 Q. This is going to come across probably as
8 aggressive, but did you prepare for your deposition
9 today?

10 A. Yes.

11 Q. Did you look at the 30(b)(6) notice and the list
12 of topics?

13 A. Yes, I did.

14 Q. And so when the topic asked for communications
15 between the debtor and the committee or the debtor and
16 Cole Kepro regarding settlement negotiations, the
17 settlement agreement, or the 9019 motion, did you
18 prepare for that topic?

19 A. Yes.

20 Q. But you didn't find out who proposed various
21 terms as part of those settlement negotiations?

22 A. In my review in preparation for this deposition,
23 I didn't make a specific note of who the individuals
24 were that proposed each specific term of the settlement.
25 But, yes, to answer your question, I reviewed those

1 correspondence to the extent that they're available to
2 me. I had conversations to the extent that I could
3 about these topics. I prepared for them accordingly.
4 But sitting here right now in front of you, without
5 saying something potentially incorrect, I couldn't
6 answer that question based on my review.

7 Q. Okay. Do you know why the proposed settlement
8 agreement has Cole Kepro being released at the moment
9 that the bankruptcy court approves the settlement as
10 opposed to when Cole Kepro pays the settlement?

11 A. I would defer --

12 MR. MATOTT: Objection to form.

13 A. I would defer to counsel on the legal aspects of
14 that. But I would assume that the debtor would want the
15 freedom to effectuate the settlement in the way that it
16 sees fit upon court approval.

17 BY MR. STROTHER:

18 Q. You're here testifying for the debtor, though, so
19 why are you assuming -- I mean, you're the mouth of the
20 debtor today; right?

21 A. Sure.

22 Q. Okay. So are you saying that the debtor is --
23 the debtor has evaluated whether that was a good idea or
24 not?

25 MR. MATOTT: Objection to form.

1 A. I would say that the debtor has evaluated it,
2 considering that it's reflected in those documents, yes.

3 BY MR. STROTHER:

4 Q. And as you sit here today on behalf of the
5 debtor, you don't know why the debtor is agreeing to
6 release those claims at the moment that the settlement
7 is approved as opposed to when the settlement's actually
8 paid?

9 MR. MANN: Objection to form.

10 MR. MATOTT: Objection to form.

11 A. I would refer you to the prior answer that I gave
12 about why the debtor would do that.

13 BY MR. STROTHER:

14 Q. Why? I don't know your answer. Why did the
15 debtor do that?

16 A. The debtor would, presumably, based on putting
17 that term in the settlement agreement, like to
18 effectuate the settlement in the way that it sees fit
19 upon court approval.

20 Q. Well, that's what you're -- are you here to
21 testify about that process today?

22 A. Yes.

23 Q. But you don't know the answer to the question?

24 A. Maybe I'm misunderstanding, but I just --

25 MR. MATOTT: Objection.

1 A. -- gave you the answer to the question.

2 BY MR. STROTHER:

3 Q. Tell me if I'm misunderstanding your testimony.

4 You're presuming that the debtor looked at that
5 condition and concluded that that was good for the
6 debtor, basically; right?

7 A. I apologize. Could you please repeat your
8 question.

9 Q. Sure.

10 I mean, I understand your testimony, and I'm
11 going to try to use the words as best I can that you
12 used, that you presume -- that was a word you used --
13 you presume that the debtor effectuated -- which was
14 another word you used -- the terms of the agreement in
15 the way that the debtor best saw fit. Right?

16 A. That sounds right.

17 Q. Okay. Are you here today able to tell me why the
18 debtor decided that that term should be effectuated in
19 that way?

20 A. The debtor negotiated the settlement in good
21 faith with Cole Kepro and found that these were the best
22 terms that they could get in the settlement. In that
23 negotiation, that was a term of the final settlement
24 that the debtor and Cole Kepro agreed upon.

25 Q. So true or false? You don't know why.

1 MR. MANN: Objection to form.

2 A. Again, I believe that the debtor found that -- in
3 its good faith negotiations with Cole Kepro -- these
4 were the terms that it was able to get and put in front
5 of the court and that the debtor in its business
6 judgment would like to enter this settlement and
7 effectuate the transaction when it's approved.

8 BY MR. STROTHER:

9 Q. Let me shift gears for a second. Before the
10 break, you testified that the debtor believed that the
11 court would not approve of a settlement -- strike that.

12 I believe you testified that the court would not
13 approve of a deal where Mr. McAlary purchased the Cole
14 Kepro claims for a million dollars?

15 A. I don't believe I said that.

16 Q. Okay. Do you have a position one way or the
17 other on that?

18 MR. MANN: Objection to form.

19 A. I'd say the same as I said before. The debtor
20 assessed both paths forward for resolution of these
21 claims, the claims against Cole Kepro, and decided that
22 the most viable and best interest of the debtor was to
23 pursue the settlement with Cole Kepro.

24 BY MR. STROTHER:

25 Q. Okay. Do you know how much cash Cash Cloud paid

1 Cole Kepro in total? Was that part of your initial
2 assessment?

3 A. Could you please provide more context to what
4 period, for what --

5 Q. Are you familiar with the transactions between
6 Cole Kepro and Cash Cloud?

7 A. Generally speaking, yes.

8 Q. Generally, what's your knowledge?

9 A. My understanding is that a majority of the
10 debtor's inventory -- specifically its BTM or DCM
11 inventory -- is comprised of Cole Kepro branded or Cole
12 Kepro model DCMs, and that the debtor paid significant
13 amount of money for those DCMs, some of which were taken
14 into possession by the debtor, and some of which were
15 not.

16 Q. My understanding -- and correct me if you have a
17 different understanding -- my understanding is that Cole
18 Kepro ultimately had paid over 32 million -- I'm sorry.
19 Strike that.

20 My understanding is that Cash Cloud paid Cole
21 Kepro over 32 million as part of their transactions. Do
22 you have reason to disagree with that?

23 MR. MANN: Objection to form.

24 A. No.

25 ///

1 BY MR. STROTHER:

2 Q. Okay. You mentioned that some of the kiosks were
3 taken into possession by the debtor, and some were not?

4 A. Yes. That's my understanding.

5 Q. Do you know what Cole Kepro has done with the
6 other kiosks?

7 A. I would be speculating, but my understanding is
8 that they still have possession of many of those kiosks.
9 And, as the market for these kiosks have shown, they're
10 somewhat difficult to monetize, to put it lightly. And
11 those assets are still on Cole Kepro's books, and they
12 haven't been able to move them, from my understanding.

13 Q. Are you familiar with Cole Kepro's affiliate
14 American Kiosks?

15 A. That name sounds familiar, yes.

16 Q. Are you aware that Cole Kepro has been marketing
17 Coin Cloud kiosks for sale using the American Kiosks
18 name?

19 A. I have heard that. Generally, I'm not surprised
20 that they're looking to move those assets, considering
21 their obligations that they have on their books.

22 Q. When you evaluated Cole Kepro's financial status,
23 did you do a look-back for fraudulent transfers?

24 A. That was not the scope of what I was analyzing.

25 Q. So no?

1 MR. MATOTT: Objection to form.

2 A. Right. No.

3 BY MR. STROTHER:

4 Q. Do you know what the relationship is, if any,
5 between Cole Kepro and Genesis Coin?

6 MR. MANN: Objection to form.

7 A. I'm not aware of any legal relations, but I'm
8 unsure what their business ventures -- if they involve
9 one another.

10 BY MR. STROTHER:

11 Q. Did you -- thinking about the claims against Cole
12 Kepro, did you ever do a breakdown of the financial
13 impact of I'll call it the kiosk problem on Cash Cloud's
14 operations?

15 A. I apologize --

16 MR. MANN: Objection to form.

17 MR. MATOTT: Objection to form.

18 And, Justin, I know you're building a launch
19 here, and I'm trying not to object to relevancy, but it
20 seems like a lot of it is getting outside the scope of
21 the examination topic.

22 MR. STROTHER: I disagree with you. I think
23 that -- I think when I talked with you and Laura, we
24 explained -- I explained our general position about why
25 we think that the 9019 motion shouldn't be approved.

1 And this all goes into those topics about the analysis
2 done, basically, to compare Mr. McAlary's offer to Cole
3 Kepro's offer. So I respect that you don't see the
4 relevance or the connection, but I do. But hopefully
5 I'm kind of still -- I'm zipping through on the edge, so
6 maybe this isn't an issue. But I would like to get an
7 answer to that question. Are you going to let him
8 answer it?

9 MR. MATOTT: Just noting my objection. I didn't
10 direct him not to answer. I just -- you told me to let
11 you know when we thought we were veering out, and that's
12 what I was doing.

13 MR. STROTHER: Understood. Yeah, I'm sorry to
14 read more into it.

15 MR. MANN: Can we repeat the question.

16 MR. STROTHER: Sure.

17 (Record read.)

18 A. I've absolutely seen Coin Cloud's financials over
19 what I'd probably call from its recorded existence until
20 very recently. And I've also, you know, seen various
21 documents related to the litigation throughout my time
22 engaged as a financial advisor to Coin Cloud. And I've
23 had numerous conversations with management and Chris
24 about what the debtor at that time believed transpired
25 and what Chris believed transpired. I've seen documents

1 that could correlate those two things, but I -- without
2 giving a legal opinion of if those damages are valid --
3 wouldn't be able to say for sure that I've conducted a
4 full analysis of it. But I'd be happy to say that I've
5 at least seen things that could relate them.

6 BY MR. STROTHER:

7 Q. Sidestepping and inviting you not to try to
8 conduct a legal analysis about the validity of the
9 claims, did you ascertain a range of values about the
10 likely damage caused by what the debtor is alleging in
11 its claims against Cole Kepro?

12 MR. MANN: Objection to form.

13 A. I don't know that a full analysis was ever
14 finalized. I've seen dips in the debtor's financials
15 during the time periods described by Chris and the
16 debtor, but I wouldn't be comfortable completely
17 quantifying or saying that there's a final analysis of
18 that. And I've also heard opinions from counsel who's
19 leading that litigation about what the potential value
20 of those claims are.

21 BY MR. STROTHER:

22 Q. Understood. Tell me about the dips that you saw,
23 then.

24 A. Sure.

25 Q. What was the -- can you quantify what dips you

1 saw?

2 A. I would probably say that Coin Cloud's
3 financials, for lack of a better term, almost imploded
4 several times with massive dips in primarily
5 profitability, at least on the books. Not always a
6 linear dip; sometimes large dips within a month that
7 lasted for months. And even during the bankruptcy, a
8 dip in the performance of the debtor's operations.

9 MR. STROTHER: I'm going to interrupt the
10 deposition really fast. Is everyone good on Zoom and
11 phone? We heard some beeping.

12 MR. MATOTT: Yeah, sorry. I think -- can you
13 hear me?

14 MR. STROTHER: Yes.

15 MR. MATOTT: Sorry. The conference landline got
16 an incoming call that I was trying to ignore, so sorry
17 about that.

18 MR. STROTHER: No worries.

19 BY MR. STROTHER:

20 Q. Have you ever spoken directly with anyone on
21 behalf of Fifth Third Bank?

22 A. Not personally.

23 Q. Have you been -- when you say "not personally,"
24 what do you mean by that?

25 A. Me, as an individual, I've not had a conversation

1 with that bank.

2 Q. Okay. Have you participated as just an observer
3 and watched other people have conversations with Fifth
4 Third Bank?

5 A. I don't believe so directly, but I'm aware of
6 their involvement in the intercreditor agreement that's
7 been attached as part of the settlement.

8 Q. What is your knowledge about Fifth Third's
9 approval of the intercreditor agreement?

10 A. My understanding is that Fifth Third has agreed
11 to allow the debtor to take a senior position on the
12 insurance asset as it relates to Cole Kepro's financial
13 situation.

14 Q. Who on behalf of the debtor, if you know, had
15 those conversations with Fifth Third Bank?

16 A. I'm not specifically aware of the individuals
17 that were all part of it, but I believe it would be Fox
18 Rothschild, the debtor's counsel.

19 THE REPORTER: Sorry. We just went down to four.
20 I just want to make sure they can still hear us one more
21 time.

22 MR. MATOTT: I can still hear you. Thanks for
23 checking, Mia. Laura just got off.

24 THE REPORTER: Okay. Thank you. Sorry.

25 ///

1 BY MR. STROTHER:

2 Q. Did the derivative claims brought by the
3 committee against Mr. McAlary impact the debtor's
4 analysis, evaluation, or assessment of Mr. McAlary's
5 offer to purchase the claims against Cole Kepro?

6 MR. MANN: Objection to form.

7 A. I would say that, from my memory, it's referenced
8 certainly in I think Mr. Ayala's declaration in support
9 of the 9019 motion. Otherwise, I would assume those
10 conversations would be under privilege.

11 BY MR. STROTHER:

12 Q. And I don't want you to assume anything. If you
13 participated in privileged communications, by all means,
14 tell me that happened. But I don't want you to assume.

15 So do you know -- other than in Mr. Ayala's
16 declaration, are you aware of whether those derivative
17 claims impacted the debtor's analysis, evaluation, or
18 assessment?

19 A. I would say that on its own, the inclusion in
20 Mr. Ayala's declaration would indicate that the debtor
21 did.

22 Q. Sure.

23 A. And therefore, there would have to be
24 conversations about it, or consideration that were under
25 privilege.

1 Q. And, again, it sounds like you might be assuming.
2 Are you telling me that there were communications that
3 you participated in that were privileged?

4 A. Yes.

5 Q. Okay. To evaluate -- I hope that this doesn't
6 get an objection, but to evaluate whether we believe
7 they're privileged or not, are you able to disclose who
8 you had -- you had communications with that you're
9 believing are privileged on that subject?

10 MR. MANN: He's just asking the identity of like
11 who you talked to --

12 MR. STROTHER: Yeah, sure.

13 MR. MANN: -- not the content --

14 MR. STROTHER: Right.

15 MR. MANN: -- of the communication.

16 A. Yeah, at the very least, I know that debtor's
17 counsel was involved; Province was involved; I was a
18 party to those correspondence; and likely, for at least
19 some of them, Seward & Kissel as well.

20 BY MR. STROTHER:

21 Q. Okay.

22 A. And probably FTI.

23 Q. Other than the way it's expressed in Mr. Ayala's
24 declaration, are you aware of any other impact that the
25 debtor believes the derivative claims against

1 Mr. McAlary have on the evaluation of Mr. McAlary's
2 offer to purchase the Cole Kepro claims?

3 MR. MANN: Objection to form.

4 MR. MATOTT: Objection to form.

5 A. I think I understand your question, but could you
6 just repeat it one more time, please.

7 BY MR. STROTHER:

8 Q. Yeah. I'm going to set the stage a little better
9 so you understand what it is I'm asking.

10 You've told me that Mr. Ayala included an impact
11 or conclusion regarding the impact in his declaration;
12 right?

13 A. Yes. I believe so. It would be helpful to have
14 the declaration, but that's my memory, yes.

15 Q. And you're right. I believe you're right.

16 My question is, okay, setting that aside, are you
17 aware of any other impacts that the debtor believes the
18 derivative claims filed against Mr. McAlary have on the
19 evaluation, assessment, or analysis of Mr. McAlary's
20 offer to purchase the Cole Kepro litigation claims?

21 MR. MANN: Objection to form.

22 A. I believe that it's possible. I would say that
23 Mr. Ayala's statements in his declaration are pretty
24 broad. So maybe all of them -- all of those
25 considerations fall under that language, but I'd want to

1 like look at the language physically to opine on that.

2 BY MR. STROTHER:

3 Q. Well, are you -- I can do that. Mr. James, there
4 are a couple of ways that I can handle showing you
5 Mr. Ayala's declaration. One is -- and I'd have to take
6 a break to technologically make this happen -- is I
7 could go into our court reporter's system and make this
8 an exhibit and show it to you. I'm happy to do that. I
9 could also flip my laptop over around and let you read
10 it and -- or I can read it into the record. I'm happy
11 to do whatever it is that would make you feel good about
12 answering the question.

13 THE WITNESS: Does it matter legally?

14 MR. MANN: Yeah, I think just if you -- I feel
15 like having an exhibit would be nice, but for the time
16 sake of it all like -- I don't know what Andrew can see.

17 MR. MATOTT: So my -- as long as you're referring
18 to like Docket 1423 and you give me paragraphs, I think
19 I'm good to go, and you can show him your laptop. I
20 think that's the way to streamline it.

21 MR. MANN: Yeah. Let's do that. Read in the ECF
22 so we know specifically which document it is, and
23 then --

24 MR. STROTHER: Good idea.

25 MR. MANN: -- you read it, and he can view it.

1 MR. STROTHER: Good idea. So I'm going to do
2 that and do the follow-up questions, and then we can
3 take a break and decide whether to do lunch or not.
4 It's a little after noon.

5 MR. MANN: Okay.

6 BY MR. STROTHER:

7 Q. All right. I'm going to show you but not make an
8 exhibit Document 1423, which I'll represent to you is
9 the declaration of Daniel Ayala executed on the 20th day
10 of October 2023. And I'll call your attention to
11 paragraph 10, which I have highlighted on my laptop.
12 I'm going to read it into the record. Then I'm going to
13 ask you whether I read it correctly.

14 "The debtor evaluated the offer by Chris McAlary
15 and decided against it because it was for the purchase
16 of multiple litigation claims that valued the claims
17 much less than possibly settling them separately. Also,
18 another factor that was considered is there is a current
19 derivative claim against Chris McAlary. Any purchase of
20 the litigation claim could impact the collectibility of
21 that potential judgment."

22 Did I read that correctly?

23 A. Yes.

24 Q. All right. I would like to focus your attention
25 on the last two sentences regarding the derivative claim

1 and it impacting the collectibility of that potential
2 judgment.

3 So my original question, Mr. James, is are you
4 aware of any other impacts that the debtor believes that
5 the derivative claims against Mr. McAlary have on the
6 evaluation of the offer made by Mr. McAlary, other than
7 that which is expressed here by Mr. Ayala?

8 MR. MANN: Objection to form.

9 A. Just to be -- just to be clear -- so it
10 references collectibility. I would also say that a
11 consideration was viability. Maybe logically isn't
12 the right word, but as a matter of getting something
13 approved or, you know -- or getting a document fully
14 negotiated, but that -- that's probably a good umbrella
15 of considerations.

16 MR. STROTHER: Okay. I think this is a fine time
17 to take a break.

18 MR. MANN: Okay.

19 * * *

20 (RECESS TAKEN FROM 12:06 P.M. TO 1:04 P.M.)

21 * * *

22 BY MR. STROTHER:

23 Q. Mr. James, we just had a lunch break. Are you
24 ready to proceed?

25 A. Yes.

1 Q. Okay. I want to pick up I think with where we
2 left off. We were looking at Mr. Ayala's declaration.
3 I'll show you again. The last sentence of the
4 declaration, paragraph 10, is "Any purchase of the
5 litigation claim could impact the collectibility of that
6 potential judgment."

7 So you understand that this is referring to a
8 possible purchase of the litigation claim by
9 Mr. McAlary?

10 A. Yes. That would make sense.

11 Q. Okay. Just making sure that you understand the
12 context.

13 Do you understand why that is? Why does the
14 debtor assert that Mr. McAlary purchasing a litigation
15 claim against Cole Kepro could impact the collectibility
16 of a judgment against Mr. McAlary?

17 A. Sorry. Maybe I did misunderstand your question.
18 A judgment against Mr. McAlary or collectibility of the
19 judgment against Cole Kepro?

20 Q. My understanding of this sentence is it would be
21 a potential judgment against Mr. McAlary, but if you
22 read it differently, please tell me. And take your
23 time.

24 A. Yeah, please, if you don't mind.

25 Q. I don't. Take your time.

1 A. I see. Yes. I agree with your initial
2 explanation of what that sentence means, yes.

3 Q. Okay. I understand that this is Mr. Ayala's
4 declaration, so if you don't have an answer, okay. I
5 get it.

6 Do you know why the debtor believes that
7 Mr. McAlary purchasing the litigation would lead to
8 collectibility problems with a judgment against
9 Mr. McAlary?

10 A. Right. So I believe that it could potentially
11 impact the collectibility if Mr. McAlary were to expend,
12 you know, a significant amount of his resources
13 purchasing that asset and then would potentially leave
14 another of the debtor's assets uncollectible due to
15 insufficient funds, maybe as one example of how that
16 could impact collectibility.

17 Q. Okay. Have you evaluated the collectibility of
18 that judgment?

19 A. The collectibility of?

20 Q. Potential judgment.

21 A. Just to clarify, because there's multiple
22 judgments now, I guess, in the conversation.

23 Q. That's fair. Let me ask the question
24 differently.

25 What I'm getting at, I guess, is instead of

1 collectibility, have you evaluated the likelihood of
2 getting a judgment against Mr. McAlary?

3 A. The debtor is not the one pursuing the claim, I
4 guess.

5 Q. Which is okay. But have you evaluated -- have
6 you evaluated the likelihood of getting a judgment even
7 though it's the committee pursuing it?

8 A. The debtor is -- I would say, as a
9 representation, the debtor's probably -- it's probably
10 best phrased as the debtor is aware of the 25 million or
11 so that I believe is asserted as damages -- and that's a
12 rather large magnitude -- would be enough to impact
13 probably anyone's collectibility or any collectibility
14 from an individual, if that makes sense.

15 Q. No. Because my question is have you evaluated
16 the likelihood of a judgment actually being rendered
17 against Mr. McAlary. Have you?

18 A. I would say it's --

19 MR. MATOTT: Objection.

20 A. -- maybe too early to give a formal opinion on
21 that. But it's still a distinct possibility.

22 BY MR. STROTHER:

23 Q. What do you mean by "distinct possibility"?

24 A. I don't know that it would be appropriate to rule
25 out that as a very real possibility.

1 Q. Well, I'm not asking you to rule anything out.
2 I'm just asking you if you've evaluated the likelihood.
3 And if the answer is no, then I move on to something
4 else. If the answer is yes, then I ask you, what's the
5 evaluation? And then maybe that's your answer; right?
6 "Well, it's too early to really" -- so have you done any
7 kind of evaluation of the likelihood of the committee
8 getting a judgment against Mr. McAlary?

9 MR. MANN: Objection to form.

10 A. I apologize. Maybe my earlier answer should have
11 been clarified by a yes, which is, you know -- is sort
12 of implied by the magnitude of the claim.

13 BY MR. STROTHER:

14 Q. Just the mere fact that the committee filed a
15 large claim against Mr. McAlary means that it's possible
16 that they win and there's a judgment against him?

17 MR. MANN: Objection to form.

18 BY MR. STROTHER:

19 Q. Is that the logic?

20 A. I would say that that is a very high level way of
21 putting that, yes.

22 Q. Did you do any other analysis other than noting
23 that a claim had been filed and what the amount of the
24 claim was to evaluate the likelihood of a judgment being
25 rendered against Mr. McAlary?

1 A. My understanding is that derivative standing was
2 granted on the grounds that the claims were colorable,
3 and that maybe in itself is enough to take it seriously.

4 Q. I want to try to clarify with you what your
5 understanding is of what Mr. McAlary's offer is for the
6 Cole Kepro -- the claims against Cole Kepro. Okay?

7 I note that in Mr. Ayala's declaration, the first
8 sentence of paragraph 10 that we looked at mentions that
9 the offer by Mr. McAlary was for the purchase of
10 multiple litigation claims. And I think that was your
11 testimony at the beginning of the deposition. Right?

12 A. I believe Mr. McAlary's offer was for multiple
13 litigation claims.

14 Q. Okay. So, as you sit here today for the debtor,
15 you're not aware of an offer that Mr. McAlary made just
16 for the claim against Cole Kepro separate and apart from
17 any other litigation claims?

18 MR. MANN: Objection to form.

19 A. I believe that mischaracterizes what I said.
20 BY MR. STROTHER:

21 Q. I'm asking you. Are you aware of it, or are you
22 not aware of it?

23 A. That sounds correct.

24 Q. Okay.

25 MR. MATOTT: Objection.

1 BY MR. STROTHER:

2 Q. Well -- so when you say it "sounds correct," I'm
3 asking you if you're aware of it or not --

4 MR. MANN: Objection to form.

5 BY MR. STROTHER:

6 Q. -- so are you aware that Mr. McAlary has made a
7 \$1 million cash offer for the claims against Cole Kepro
8 separate and independent from any other litigation
9 claims?

10 A. Again, that sounds correct --

11 MR. MATOTT: Objection to form.

12 A. -- but it would probably be helpful to be able to
13 see the actual offer to understand the language fully in
14 the context that you're asking the question.

15 BY MR. STROTHER:

16 Q. Okay. When you say it "sounds correct" but I'm
17 asking if you're aware -- so you're not aware? I'm not
18 asking you if something sounds correct. I want to know
19 what is in your head right now as you're sitting here
20 giving your sworn testimony. So please listen to my
21 question --

22 MR. MATOTT: Objection.

23 Sorry. I didn't mean to cut you off, Justin.

24 MR. STROTHER: That's okay. Go ahead with the
25 objection.

1 MR. MATOTT: Note I object. I think he answered
2 it.

3 BY MR. STROTHER:

4 Q. Okay. I want to make sure that I've asked it
5 correctly. As you're sitting here right now, do you
6 believe Mr. McAlary has made a settlement -- a purchase
7 offer for the claims against Cole Kepro separate and
8 apart from any other litigation claims that the debtor
9 might have against other parties?

10 MR. MANN: Objection to form.

11 MR. MATOTT: Same objection.

12 A. As I said in my last response, that sounds
13 correct. I won't push my answer further than that,
14 answering in the affirmative simply because you're
15 implying that it must be true. I believe --

16 BY MR. STROTHER:

17 Q. I'm just asking if you know.

18 A. -- yes --

19 Q. I'm mean, I'm not -- I mean, I could say, "Are
20 you aware that the sky is purple," and you could say,
21 "No, I'm not aware; I don't think it is"; right?

22 A. Based on my understanding, it sounds correct --

23 Q. So you are aware?

24 A. -- what you just described.

25 Yes.

1 Q. Okay. Then can you tell me why this declaration
2 from Mr. Ayala in support of the proposed settlement
3 between debtor and Cole Kepro refers to the debtor
4 rejecting an older offer by Mr. McAlary instead of the
5 one pertaining only to Cole Kepro? If you know.

6 MR. MATOTT: Objection. Calls for speculation.

7 BY MR. STROTHER:

8 Q. Right, right. If you know. If you don't know,
9 that's okay.

10 A. I don't know. I don't want to make an answer.

11 Q. Is the following statement true? You have not
12 compared a 1 million cash offer from Mr. McAlary for the
13 Cole Kepro litigation separate and apart from any other
14 litigation with the proposed Cole Kepro settlement.

15 MR. MANN: Objection to form.

16 A. Are you asking -- just to clarify, are you asking
17 me as an individual?

18 BY MR. STROTHER:

19 Q. Well, you're sitting here as the representative
20 of the debtor. And so if you were to have done the
21 evaluation on your own time as a lark, I still would
22 want to know the answer. But I'm assuming that you did
23 it on behalf of the debtor, if you did it.

24 A. Right. So --

25 Q. I'm not asking you whether other people on behalf

1 of the debtor did, correct. Right now, I'm asking about
2 whether you did.

3 Do you want me to ask the question again?

4 A. No. That's okay. I've -- yes. I've seen the
5 offers and compared them. And I'd also like to clarify
6 that the debtor is -- I'm not the only professional of
7 the debtor.

8 Q. Yes.

9 A. And I do know that the debtor has evaluated the
10 offers.

11 Q. Okay. You said "offers." So you're referring to
12 the \$1 million offer from Mr. McAlary? That's the one
13 you're talking about?

14 A. Yes. As I understand them, yeah.

15 Q. Okay. I'm still not sure I'm understanding your
16 answer, so please -- I'm going to focus on your question
17 to me. You asked, "Me, personally? I, Tanner James,
18 did I do this?" So yes. Did you, Tanner James, compare
19 a \$1 million offer from Mr. McAlary for the Cole Kepro
20 litigation against the proposed settlement between the
21 debtor and Cole Kepro?

22 A. Yes. I believe so. If you could show me -- if
23 you believe that I'm not referencing the correct offer,
24 it would be helpful. But, yes, as I understand your
25 question, yes.

1 Q. Okay. So why -- what was your outcome? What was
2 your conclusion when you did that comparison?

3 A. I believe we've discussed this several times
4 already during this testimony, but that one of these
5 options is less viable and likely uncollectible.

6 Q. The Cole Kepro one; right?

7 A. No. That's --

8 Q. Really? Okay. Go ahead.

9 MR. MATOTT: Objection. First, let him answer.
10 Second, kind of a little argumentative there.

11 BY MR. STROTHER:

12 Q. Okay. So the potential judgment against
13 Mr. McAlary is potentially uncollectible -- I don't
14 understand your answer.

15 A. Right. I think you're mischaracterizing what I
16 said.

17 Q. Okay.

18 A. What I said was that Mr. McAlary's offer was a
19 less viable and likely uncollectible option versus the
20 9019 with Cole Kepro.

21 Q. Why are you calling Mr. McAlary's offer
22 uncollectible?

23 A. It would likely be -- as I described earlier,
24 there is less chance of collectibility based on the
25 circumstances of Cole Kepro's financial position.

1 Q. You keep saying "like I said earlier," but you
2 have not told me why you think it's uncollectible. Why
3 would a purchase money offer be uncollectible from
4 Mr. McAlary? Why are you saying that?

5 MR. MANN: Objection to form.

6 MR. MATOTT: And asked and answered. I think you
7 just don't like the answer.

8 MR. STROTHER: I haven't heard the answer.

9 BY MR. STROTHER:

10 Q. Are you going to answer, or are you going to say
11 that you already gave me an answer?

12 A. Could you please restate your question.

13 Q. Yeah.

14 You just said that the offer from Mr. McAlary is
15 potentially uncollectible. I think those were basically
16 your words. Is that accurate? Is that your testimony?

17 MR. MANN: Objection to form.

18 A. As I would defer the legal analysis of this to
19 counsel, I believe any settlement with Mr. McAlary would
20 have to be approved by the court. In that instance,
21 Cole Kepro filing for bankruptcy would likely render
22 that uncollectible if the payment had not already been
23 made.

24 Q. What if the payment had already -- why are you
25 assuming the payment wouldn't be made? It's a cash

1 offer; right?

2 A. Sure.

3 MR. MANN: Objection --

4 BY MR. STROTHER:

5 Q. What terms are you aware of from Mr. McAlary that
6 suggests that he wouldn't pay the \$1 million?

7 MR. MANN: Objection to form.

8 A. It seems that we're speculating quite a bit now
9 at this point, but I would say --

10 BY MR. STROTHER:

11 Q. Speculating about what? I would love to -- who's
12 speculating?

13 MR. MANN: Objection to form.

14 MR. MATOTT: Objection. Again, can you just let
15 him answer, Justin?

16 BY MR. STROTHER:

17 Q. Go ahead.

18 A. Like I said in my previous answer, I'd leave the
19 legal analysis of this to the attorneys.

20 Q. What legal analysis? Seriously, you're -- what
21 legal analysis are you leaving to the attorneys? I
22 don't understand --

23 A. I'll finish my answer if you let me.

24 I leave the legal analysis to the attorneys. But
25 I believe if this settlement would require court

1 approval -- as an example, even if Mr. McAlary did pay
2 the debtor, what agreement is there to base that payment
3 on, and what is the chance Mr. McAlary sues the debtor
4 to return that payment without a court-approved
5 agreement, which would, to my understanding -- again,
6 would leave it to the lawyers -- maybe render that
7 agreement null or void.

8 Q. I understand your answer.

9 Where does the idea that the court would not
10 approve a purchase by Mr. McAlary come from?

11 A. I'd defer to counsel on the legal analysis of
12 that question, but --

13 Q. I'm not asking for a legal analysis. I'm asking
14 where it came from. There are multiple parties that it
15 could have come from. It could have come from Province;
16 it could have come from FTI; it could have come from
17 counsel; it could have come from Cole Kepro; it could
18 have come from the committee. I'm just trying to figure
19 out why you, sitting here today, are swearing that
20 there's a possibility that the court would not uphold a
21 settlement agreement, a purchase money agreement, for
22 \$1 million cash. And I'm not asking for a legal
23 analysis; I'm asking, where did you get that in your
24 head?

25 MR. MANN: Object to form.

1 MR. MATOTT: Another objection on my part. I
2 think he was in the middle of explaining. There was a
3 "but," and then -- I don't know if there's a question
4 pending now or a new question or the same question.

5 MR. STROTHER: You-all really don't want me to
6 get the answer to this very simple question. I don't
7 understand.

8 BY MR. STROTHER:

9 Q. I'm asking you, as a person sitting here at a
10 table, where did the idea come from? Why don't you
11 understand that question?

12 MR. MANN: Objection to form.

13 MR. MATOTT: Objection. Argumentative.

14 MR. STROTHER: Okay. Let me back up a minute. I
15 know that the record will reflect that I'm getting
16 agitated, and I apologize to everyone for that. I don't
17 understand why my question is confusing and leading to
18 deferring to legal analysis when I don't believe I'm
19 asking for any legal analysis.

20 BY MR. STROTHER:

21 Q. So will you please help me understand why you
22 can't tell me where the idea that the court would not
23 approve Mr. McAlary buying those claims for \$1 million
24 came from?

25 MR. MANN: Objection to form.

1 A. So let me be clear. As a professional -- I'm
2 pretensing my answer with that caveat because I'm not an
3 attorney, though I would like to give you the second
4 half of my answer, if I'm not interrupted. Fair?

5 BY MR. STROTHER:

6 Q. No. I'm not asking for a legal analysis. I made
7 that clear. So don't preface your answer with you're
8 deferring to your attorneys. I get it. Just answer the
9 question.

10 MR. MATOTT: Objection.

11 MR. STROTHER: He asked me a question.

12 MR. MATOTT: Don't tell him how to answer. You
13 know, like just let him answer. I know we're getting a
14 little tense here.

15 Tanner, please answer his question the best you
16 can.

17 THE WITNESS: Sure.

18 With conversation with what I said before in
19 mind, please, I believe that it does add challenges to
20 the potential approval of a settlement with Mr. McAlary
21 given the derivative standing the committee has to
22 pursue claims against Mr. McAlary. That, in itself, is
23 my answer. I believe that that is a factor that
24 increases the challenge in the probability that that is
25 a viable option for the debtor.

1 BY MR. STROTHER:

2 Q. What question are you actually answering?

3 MR. MANN: Objection to form.

4 MR. MATOTT: Objection. Could we read back the
5 last question so we could see which question was pending
6 that he answered?

7 MR. STROTHER: No. I'm asking him what question
8 he was just answering.

9 MR. MATOTT: Yeah, and I --

10 MR. STROTHER: You can take him on redirect or
11 something.

12 MR. MATOTT: No. I want to hear the last
13 question that was pending, and I'm asking if we could
14 read that back, which I think is my right.

15 MR. STROTHER: It is actually not your right.
16 I'm not asking -- no. I'm asking him what question he
17 just gave testimony about. You don't get to interrupt
18 my questioning and decide to have something read back.
19 It doesn't work that way, Andrew.

20 MR. MANN: Objection to form.

21 BY MR. STROTHER:

22 Q. So, please -- do you remember my question? If
23 you don't remember it or don't know what you're
24 answering, I'll concede; let's read it back. If you
25 know what question you're answering, I would like you to

1 tell me, please.

2 A. Right. So given the --

3 MR. MATOTT: Objection.

4 A. -- complexity of this question and how it's kind
5 of unfolded, I believe you asked how -- if I assessed
6 the viability or collectibility of this claim in any
7 way. But, again --

8 BY MR. STROTHER:

9 Q. No.

10 A. -- I would like to hear the question maybe --

11 Q. Sure.

12 A. -- and I can re-answer it, if you'd like.

13 Q. Sure.

14 The question was, where did that idea come from?

15 MR. MANN: Objection to form.

16 BY MR. STROTHER:

17 Q. So do you want to try --

18 MR. MATOTT: Objection. Also asked and answered.

19 BY MR. STROTHER:

20 Q. Have you -- do you believe that you have sat here
21 and told me who generated that idea?

22 MR. MATOTT: Objection.

23 A. I've had a variety of conversations with debtor's
24 counsel that included committee counsel, other estate
25 professionals, including Province. It's something that

1 has certainly been addressed in those conversations, as
2 well as my personal knowledge of the derivative standing
3 the committee has been granted and the circumstances of
4 the settlement that I'm aware of.

5 BY MR. STROTHER:

6 Q. Do you know where the idea came from?

7 MR. MANN: Objection to form.

8 A. I guess I'm not sure -- are you referencing an
9 idea on paper or an idea that I have? I guess I don't
10 understand the question fully.

11 BY MR. STROTHER:

12 Q. Your testimony was that a claim against
13 Mr. McAlary could render the likelihood that the court
14 would approve a settlement -- a purchase by Mr. McAlary
15 difficult or unlikely; right?

16 A. That sounds -- yeah, that sounds directionally
17 accurate.

18 Q. That's the idea.

19 A. Okay.

20 Q. Where did that come from? Did you generate that
21 idea, or did another human being generate that idea?

22 MR. MANN: Objection to form.

23 A. I could tell you right now that, with those
24 pieces of the circumstances that we're looking at, I can
25 generate that idea. I just did. But it's something

1 that has also been considered by estate professionals,
2 including the debtor.

3 BY MR. STROTHER:

4 Q. Yeah, thank you.

5 MR. STROTHER: Objection. Nonresponsive.

6 BY MR. STROTHER:

7 Q. I'm not asking right now who considered it; I'm
8 not asking you whether you could generate it. I'm
9 asking you simply, do you know who generated the idea?

10 MR. MANN: Objection to form.

11 A. Can you clarify? Do you mean generated the idea
12 originally, or just now?

13 BY MR. STROTHER:

14 Q. Originally.

15 A. That, I don't know the answer of who thought of
16 that first.

17 Q. Understood. Has Cole Kepro communicated to the
18 debtor that Cole Kepro would not declare bankruptcy
19 after receiving approval of the proposed settlement
20 agreement?

21 A. Sorry. To clarify, the proposed settlement
22 agreement on the docket, the 9019 with Kepro, that's
23 what you're referencing?

24 Q. Yes.

25 A. Not to my knowledge.

1 Q. Did you participate in the decision to grant
2 derivative standing to the committee to pursue the
3 claims against Mr. McAlary?

4 A. Personally?

5 Q. Yes.

6 A. Maybe this needs more clarification, but when you
7 say "participate," do you mean as an employee of
8 Province, who's engaged by the debtor --

9 Q. Yes.

10 A. -- or do you mean -- I guess, by association,
11 yes.

12 Q. What was your participation in that decision?

13 A. My participation is that --

14 MR. MATOTT: Objection.

15 A. -- I'm an employee of Province who's engaged by
16 the debtor who gave derivative standing to the
17 committee.

18 BY MR. STROTHER:

19 Q. What did you do to participate in that decision
20 other than be an employee of Province?

21 A. I don't know that I was the decision maker in
22 that. I'm sure lots of the work that I had done up to
23 that point may have been relevant in that decision,
24 maybe indirectly.

25 Q. Who was the decision maker on behalf of the

1 debtor?

2 A. I would assume that that's the independent
3 director, Mr. Ayala, who's informed by his
4 professionals.

5 Q. Do you know that, or are you only assuming that?

6 A. No. That's my understanding of how that works
7 legally.

8 Q. So you don't know that for a fact; you assume it
9 to be true because that's the way it typically works?

10 A. Mr. Ayala -- I'll clarify, after Chris left the
11 company -- is the sole director of the company. So at
12 that point, Mr. Ayala would have made that decision,
13 yes.

14 Q. You testified earlier that -- and I don't
15 remember whether you said little or no interest in
16 selling the claim against Cole Kepro to anyone else. So
17 I'm not being cagey. I don't remember if you said
18 little or no. Was there any expression from anyone of
19 interest?

20 A. We did a rather broad outreach similar to the one
21 we did for the other assets. We did have an initial
22 conversation with the successful bidder for the hardware
23 and software assets. They explored the opportunity and
24 ultimately determined that they weren't interested. We
25 did get light responses from a couple other parties, but

1 generally speaking, a claim of this size doesn't seem to
2 fall within the target range of the type of private
3 equity or financial buyer that would pursue acquiring
4 this type of asset given the cost of taking it to
5 judgment. So there was very little response. Most
6 parties said no. To the extent that they did respond,
7 maybe one or two responded with some level of interest,
8 but didn't really make it past an introductory
9 assessment.

10 Q. Did any of those -- I hate to even call them
11 interested -- did any of those prospective buyers share
12 with you any evaluation of the merits of the claims
13 against Cole Kepro?

14 MR. MANN: Objection to form.

15 A. Off of memory, I don't believe any of those --
16 what I'll call targets, I guess -- marketing targets
17 made it to that point where they would spend significant
18 time assessing those claims.

19 BY MR. STROTHER:

20 Q. Who at Cole Kepro have you, Tanner James, had
21 direct communication with?

22 A. You'll have to excuse me for not knowing their
23 last names, but Corey and Fred.

24 Q. Do you know what their roles are at Cole Kepro?

25 A. Roughly, yes. I don't know their exact titles,

1 but I believe Fred is a more senior maybe owner or
2 fiduciary, and Corey seems to be more directly involved
3 with operations and running the business. I think
4 either likely associated with at least the ownership
5 structure of that company.

6 Q. Did the -- to what extent did the committee
7 participate in the terms of the proposed settlement
8 agreement between debtor and Cole Kepro?

9 MR. MANN: Objection to form.

10 A. My understanding is that the committee,
11 specifically Seward & Kissel, played a role in helping
12 negotiate with Cole Kepro's counsel while Province was
13 directly negotiating with the business side of Cole
14 Kepro, which is Corey and Fred.

15 BY MR. STROTHER:

16 Q. Okay. Can you tell me what aspects of the
17 proposed agreement Province, the debtor, was negotiating
18 directly with Cole Kepro on as far as the business is
19 concerned?

20 MR. MANN: Objection to form.

21 MR. MATOTT: Objection to the extent it gets in
22 to privilege when we start nitpicking content.

23 So I direct you not to answer to the extent its
24 under the common interest privilege and we're talking
25 about content of conversation.

1 BY MR. STROTHER:

2 Q. To be clear, my question was limited to
3 negotiations that you, Province, and the debtor had
4 directly with the business people, nonlawyers.

5 MR. STROTHER: So if your instruction is that
6 business people can't discuss outside of privilege, I'd
7 like you to make that clear, Andrew. Are you --

8 MR. MATOTT: I think your last question was --
9 sorry. Your last question was about who was responsible
10 for what and what those roles were assigned, and now
11 you're starting a process to eliminate, Well, who was
12 responsible for this? What was the content? I'm merely
13 saying to the extent he's getting into content of
14 conversations between the debtor and committee
15 counsel -- not, you know, the debtor and Cole Kepro --
16 that those are privileged.

17 MR. STROTHER: Thank you.

18 BY MR. STROTHER:

19 Q. Yeah, I'm not asking about conversations --
20 though I'm not conceding that we're not entitled to
21 them, I'm not asking about conversations between the
22 debtor, Province, you, and debtor's counsel. I'm asking
23 the conversations that you had with Cole Kepro. You
24 indicated that you had negotiated directly on, you know,
25 the business people -- you negotiated directly with the

1 business people. So I want to know what aspects of a
2 proposed settlement agreement those negotiations
3 comprised?

4 A. Certainly the economic terms. The negotiations
5 from the Province side were, you know -- at the very
6 least, the Province side were fairly balanced. The
7 negotiations were on and off as things changed. But
8 generally, the economic terms, you know, took priority,
9 and then opinion from legal counsel was taken where
10 needed.

11 Q. What are you referring to as the "economic terms"
12 in the final proposed settlement agreement?

13 A. Certainly the cash consideration, the form -- or
14 sorry. Not -- I guess it's not technically a cash
15 consideration. The -- what's the best way to put it?
16 Maybe the \$850,000 and the form that it came in, whether
17 that be cash or some type of note payable, things to
18 that effect. The maturity, the security interest of it.
19 Its position in the company's capital structure -- and
20 when I say "the company," I mean Cole Kepro -- if it
21 were to be successfully agreed upon. Probably among
22 others, but those are highlight economic terms.

23 Q. Okay. Did the debtor -- did the debtor consider
24 the risk of Cole Kepro filing bankruptcy after the
25 proposed settlement is approved and having any money

1 paid under that proposed settlement to the debtor called
2 back?

3 MR. MANN: Objection to form.

4 BY MR. STROTHER:

5 Q. And I know that -- I know that this may be a
6 question that you in your role defer to legal counsel on
7 to answer, and I understand that. But you -- and if you
8 don't know the answer, that's okay too. I'm just trying
9 to find out if the debtor acknowledges that there is
10 that risk. If you know.

11 MR. MATOTT: Objection to form.

12 A. Yeah, if you could just repeat your question so I
13 could get the exact --

14 Q. Okay.

15 A. -- understanding of.

16 Q. We assert that there is a risk that if the court
17 approves the settlement with Cole Kepro and all the
18 pieces fall into place and the debtor is paid \$850,000
19 pursuant to the promissory note, that Cole Kepro could
20 still file bankruptcy and call back that \$850,000
21 payment. That's our assertion. I'm asking you on
22 behalf of the debtor, does the debtor acknowledge that
23 there is a risk?

24 A. Right. So, again, I would say, just for clarity
25 of the record, it would probably require some amount of

1 legal analysis, but, yes, the debtor acknowledges that.
2 And it's probably best spelled out in the terms of the
3 actual settlement itself where the debtor made a good
4 faith effort to negotiate a position in Cole Kepro's
5 capital structure in definitive documents that would
6 hopefully preserve the value of those proceeds as best
7 as possible in the benefit of the debtor.

8 MR. STROTHER: You know, I think I can wrap up if
9 you give me about a five-minute break.

10 MR. MANN: Okay.

11 ***

12 (RECESS TAKEN FROM 1:37 P.M. TO 1:44 P.M.)

13 ***

14 MR. STROTHER: I pass the witness.

15 MR. MANN: Andrew, do you have any questions for
16 him?

17 MR. MATOTT: Nothing from us. Thanks.

18 MR. MANN: I have no questions for him.

19 MR. STROTHER: All right.

20 THE REPORTER: Do you want this transcribed?

21 MR. STROTHER: Yes.

22 THE REPORTER: Do you guys want a copy?

23 MR. MANN: Yeah. That would be good.

24 THE REPORTER: And counsel on Zoom?

25 MR. MATOTT: That would be great if we could get

1 a rough.

2 (Discussion off the record.)

3 (Proceedings concluded at 1:44 p.m.)

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1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
3) ss:

4 COUNTY OF CLARK)

5 I, MIA C. O'SULLIVAN, a Certified Court Reporter
6 in Clark County, State of Nevada, do hereby certify:

7 That I reported the taking of the deposition of
8 TANNER JAMES, commencing on Tuesday, October 24, 2023,
9 at 9:06 a.m.

10 That prior to being deposed, the witness was by
11 me duly sworn to testify to the truth, that I thereafter
12 transcribed my said shorthand notes into typewriting,
13 and that the typewritten transcript is a complete, true,
14 and accurate transcription of said shorthand notes and
15 that witness was not asked to review and correct the
transcript.

16 I further certify that I am not a relative or
17 employee of counsel of any of the parties, nor a
18 relative or employee of the parties involved in said
19 action, nor a person financially interested in the
20 action.

21 IN WITNESS WHEREOF, I have set my hand in my
22 office in the County of Clark, State of Nevada, this
23 7th day of November, 2023.

24 

25 MIA C. O'SULLIVAN, RPR, NV CCR #964

[& - account]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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VERITEXT LEGAL SOLUTIONS

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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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